APPENDIX

BEFORE THE COMMISSION ON HUMAN RELATIONS
Pittsburgh, Pennsylvania

NATIONAL ORGANIZATION FOR WOMEN, INC.
v.
THE PITTSBURGH PRESS
} FEP 558

Decision and Order

Stanley Valadez, Eve B. Gugenheim, and Joseph Esper for complainants.

Charles R. Volk, Thorp, Reed, and Armstrong for respondent.

Ralph Lynch, Solicitor of the City of Pittsburgh and Eugene Strassburger III, Assistant City Solicitor for the Pittsburgh Commission on Human Relations.

Gilbert T. Venable for the American Civil Liberties Union and the Allegheny County Council on Civil Rights.

S. Asher Winikoff, Assistant Attorney General and General Counsel, Pennsylvania Human Relations Commission, Commonwealth of Pennsylvania.

Elizabeth Boyer and Mary Jane Moody of the Ohio Bar for the Women's Equity Action League and the National Association of Women Lawyers.

Arthur B. Hanson, W. Frank Stickle, Jr., and Ralph N. Albright, Jr. of the District of Columbia Bar for the American Newspaper Publishers Association.

Appendix.

THE PRELIMINARY OBJECTIONS

The Pittsburgh Press filed preliminary objections to the complaint in this proceeding. Therefore, it is appropriate to discuss the several objections first before dealing with the substantive issues.[1]

"1. The complaint is so vague that Respondent is not adequately able to defend it on its merits. It does not meet the requirements of Rule 2(c) of the regulations of the Human Relations Commission."

Due process requires adequate notice and an opportunity to defend. Thus we must examine the prehearing record in this proceeding to determine whether there was such a lack of adequate notice in the complaint and opportunity to defend so as to violate the respondent's rights.

The complaint filed in the within case on October 9, 1969, charges the Press specifically with a violation of Section 8(j) of the Human Relations Ordinance. (This section makes it an unlawful employment practice, inter alia, to aid or participate in the doing of any act declared to be an unlawful employment practice.) The complaint further charges that the practice of "allowing employers to place advertisements in the male or female columns . . . is unlawful."

It is our judgment that the complaint presented to the Press a precise issue: whether the Press by allowing employers to run job advertisements in sex-segregated

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1. Although the Human Relations Ordinance does not mention "preliminary objections" as a pleading, we have construed the word "answer" to include motions of a preliminary nature.

columns aided said employers in the doing of an unlawful act.

Therefore it is our further judgment that the Press had adequate notice, and as discussed hereinafter, ample opportunity to prepare a defense to the charge thus presented.

On October 17, 1969, a private pre-hearing conference was held between the parties. This was a lengthy meeting and considerable discussion was devoted to the issue above stated. The meeting gave the Press additional notice as to the issue involved in this case.[2]

A meeting was also held between respective counsel prior to the hearing, and prior to hearing witness lists were exchanged between counsel.

From a time standpoint, the Press had considerably more time than the minimum ten (10) days' notice of hearing required by the Human Relations Ordinance. By a letter dated November 7, 1969, the Commission notified the Press that a public hearing had been approved to consider the charge contained in the complaint. On November 10, 1969, the Press received notification that the hearing would be held on December 10, 1969. At the request of the Press, an Order was entered on November 21, 1969, continuing the start of the hearing to January 15, 1970.

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2. However, one related issue resolved at the meeting of October 17, 1969, related to the Press printing sex designations *within the body of advertisements*. Following the meeting, the Press adopted a policy of removing such sex designations. Thus, the issue was narrowed to the legality of sex designations in the captions of help-wanted columns.

Finally, the Commission granted a two-week recess after the close of the complainant's case, to afford additional time to the Press to prepare its defense.

On the basis of the foregoing, we find no merit in the contention that the complaint was so vague that the Press was unable to prepare a defense, and in particular, we find that the complaint complied with the requirements of Rule 2 of the Commission's regulations.

"2. The complaint does not comply with Rule 2(a) of the Commission's regulations in that neither the complainant, Mr. Gardner, nor the National Organization for Women is aggrieved within the meaning of the Rule."

This objection is dismissed. Rule 2(a) must be read in the light of Section 13(a) of the Human Relations Ordinance.

Section 13(a) specifically provides that a complaint may be filed by the Commission, *or* by an aggrieved person, *or* by an organization which has as one of its purposes the combating of discrimination or the promotion of equal opportunities. The ordinance provides alternative classes of complainants by its very language. We further take notice of the fact that the National Organization for Women has as one of its primary purposes combating discrimination and the promotion of equal opportunities; thus it qualifies as an "organization" within the meaning of Section 13 (a) supra.

"3. The complaint alleges a violation of Section 8(j) of the Human Relations Ordinance. Section 8(j) makes it an unlawful employment practice

'. . . to aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful employment practice or to obstruct or prevent any person from enforcing or complying with the provisions of this ordinance or any rule, regulation or order of the Commission, or to attempt directly or indirectly to comit any act declared by this ordinance to be an unlawful employment practice.'

"The complaint does not allege any violation by any other person. The Respondent cannot be guilty of aiding, etc., another in the violation of the ordinance when no such violation is proved or even alleged. One cannot aid that which did not occur. Neither does the complaint state or allege that the Respondent as an employer is itself violating any provision of the ordinance. Respondent contends that without alleging or proving a violation of the ordinance by an employer which was aided, etc. by Respondent, the complaint is invalid on its face and must be dismissed."

The complaint does charge that the Press allows employers to insert advertisements in male or female columns, and that such practice is unlawful.

As a necessary step in adjudication of this case, the Commission must determine whether the action of an employer in causing an advertisement to be placed in a sex-segregated column itself violates the ordinance.

Therefore, this objection will be disposed of hereinafter in the discussion of the merits of this case.

"4. The chief allegations of the complaint seem to be a failure to accede to the requests of the complainant or NOW. This does not constitute a violation of laws

and therefore the complaint does not state a cause of action upon which relief can be granted."

We agree that the complaint would fail to state a cause of action if it only alleged a failure to accede to NOW's requests. However, as stated heretofore, the complaint states more and it is our judgment that the complaint does state a cause of action. Thus, we find no merit in this objection.

"5. The Human Relations Ordinance contains numerous exemptions and exceptions. The complaint does not indicate whether the acts complained of were without those exemptions and if so—how."

There is no necessity for a complaint filed in a proceeding before this Commission to include a statement or discussion of possible defenses available to a respondent. Exemptions and exceptions contained in the ordinance would be matters of possible defense and should not be anticipated in a complaint.

"6. The complaint is an effort to regulate the method of presenting want-ads to suit reader preference. Such regulation would constitute an abridgement of freedom of the press in violation of the First Amendment to the Constitution of the United States of America."

For reasons stated herein, we do not view this proceeding as an effort to regulate want-ads to suit reader preference. To the contrary, the proceeding deals with the legality of the Press's system of employment want-ad classification under the Human Relations Ordinance.

The Human Relations Ordinance is a valid enactment of the City of Pittsburgh within the authority con-

ferred upon the City by the Act of March 7, 1901, P.L. 20, Article XIX, Sec. 3, Clause XLIII, *City of Pittsburgh v Plumbers Local Union No. 27*, 113 P.L.J. 7, 1965; *Stanton Land Company et al v. City of Pittsburgh*, 111 P.L.J. 9, 1963.

Therefore, if the Pittsburgh Press has violated the Human Relations Ordinance, the First Amendment would not be available as a defense to such a violation. Want-ads represent a form of purely commercial advertising subject to compliance with a lawful ordinance. *Valentine v. Chrestensen*, 316 U.S. 52 (1942). *Directory Publishing Company v. City of Pittsburgh*, 211 A. 2d 509, 205 Pa. Super 423 (1965).

"7. Nothing in the ordinance prohibits directly or through implication the classification of help-wanted advertising and reader interest groupings and the complaint is therefore void on its face."

This objection raises the very issue involved in this case and will be disposed of hereinafter.

ADJUDICATION

This case, which is one of first impression in the United States, involves two inter-related issues as follows:

1. Whether an employer, by causing a help-wanted advertisement to appear in a sex-segregated column, violates the Human Relations Ordinance.

2. Whether the respondent Pittsburgh Press, has violated the Human Relations Ordinance by allowing employers to place help-wanted advertisements in sex-segregated columns.

Appendix.

An adjudication of the first issue is, of course, fundamental to an adjudication of the second issue. The Human Relations Ordinance, No. 75 of 1967 of the City of Pittsburgh, as amended by Ordinance No. 395 of 1969, provides in Section 8(e) thereof that it is an unlawful employment practice:

> "For any employer, employment agency, or labor organization to publish or circulate, or to cause to be published or circulated, any notice or advertisement relating to employment or membership which indicates any discrimination because of race, color, religion, ancestry, national origin or place of birth or sex."

The Press argues that its system of segregating employment want-ads is not unlawful discrimination, but rather a convenience to its readers. The Press's relevant columns are headed "Jobs-Male Interest" and "Jobs-Female Interest." In addition thereto the Press runs a disclaimer statement at the beginning of the male want-ads and at the beginning of the female want-ads as follows:

> "Notice to Job Seekers"
>
> "Jobs are arranged under Male and Female classifications for the convenience of our readers. This is done because most jobs generally appeal more to persons of one sex than the other. Various laws and ordinances—local, state, and federal, prohibit discrimination in employment because of sex unless sex is a bona fide occupational requirement. Unless the advertisement itself specifies one sex or the other, job seekers should assume that the advertiser will consider applicants of either sex in compliance with the laws against discrimination."

Discrimination is defined in Section 4(b) of the Human Relations Ordinance, as any difference in treatment based on inter-alia sex.

An employer by causing an employment advertisement to be placed in either the male interest column or the female interest column is, in our judgment, indicating a difference in treatment as to that employment based upon sex, hence engaging in unlawful discrimination.

Indeed it was admitted at the hearing by Mr. Robert Seli, Classified Ad Manager for the Press, that employers run ads in a particular column depending upon what sex they want for the job, thus clearly indicating an unlawful difference in treatment in violation of Section 4(b) supra.

"Q. —Is this the only type of—if I may use the word—education for your advertisers? Do you then proceed to tell them of the several categories that should go under this or that, take your choice?

A. —We tell them where the majority is—or we try to find out what type of person they are looking for. Are they looking for a man, or are they looking for a woman? They know this. And they are interested or more interested in a man or more interested in a woman. They know this, and they state this. This is where they want it.".

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Further and in addition to Mr. Seli's admission, the necessary implication of the segregated columns is that men are given preference for jobs in one set of columns,

and women are given preference for jobs in the other set of columns. This is supported by the fact that the Pittsburgh Press runs a third section of employment advertisements, "male-female." Clearly, jobs found in this section are available to men or women without discrimination.

> The presence of the "disclaimer" does not materially change the discriminatory nature of the classification system. In essence the present system with the use of the "disclaimer" and the word "interest" is a continuation of the prior classification system.

We recognize that must testimony was introduced by the parties on the question of job preference by sex. However, the issue of sex preferences and employment and reader convenience related to such preferences is not germane, since the Human Relations Ordinance prohibits discrimination in employment based upon sex, notwithstanding the interest or lack thereof of one sex or the other in particular occupations.

In support of the conclusion we have reached on this issue, we also take notice that certain jurisdictions have found that sex-segregated employment columns are per se unlawful, and have issued regulations or guidelines prohibiting such advertising:

The New York City Law on Human Rights, N. Y. Adm. Code Chapter 1, Title B., Sec. B 1-70 (d) is legally the same as Section 8(e) of the Pittsburgh Ordinance quoted at length above. Pursuant to that section, New York City has issued the following regulation:

"The placement of job advertisements under separate "Male" or "Female" Column Headings violates the law unless there is a bona fide occupational qualification

for the position advertised. All newspapers that publish classified advertising are expected to comply with this ruling."[3]

The Pennsylvania Human Relations Act, 43 P.S. 955 (b) (2) contains language very similar to Section 8(e) of the Pittsburgh Ordinance aforesaid. We take notice that Pennsylvania has determined that sex-segregated columns violate the State Act. On December 1, 1969, pursuant to an action taken by the Pennsylvania Human Relations Commission, notices were directed to "Classified Advertising Managers of Pennsylvania Newspapers."

"Accordingly, it is an unlawful discriminatory practice for any publication—

2. to classify help-wanted advertisements under column headings such as Male, Female, Female-Interest, or Male-Interest."

The same result has been reached by the Civil Rights Commission of Colorado, the U. S. Equal Employment Opportunity Commission, and the Nebraska Equal Opportunity Commission. On June 9, 1970 the U. S. Department of Labor, issued Sex Discrimination Guidelines, amending Chapter 60 of Title 41 of the Code of Federal Regulations, by adding a new Part-60-20. Section 60-20.2 provides in sub-section (b) thereof that the placement of an advertisement in columns headed

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3. Newspapers published in New York City have complied with this regulation. See in particular the New York Times, the Wall Street Journal, and the New York Law Journal. All have converted to a system of listing jobs alphabetically, instead of under columns headed by sex designations.

"Male" or "Female" will be considered an expression of discrimination based on sex.

Therefore, on the basis of the foregoing, we conclude that advertisers, by placing ads in columns captioned by sex, are indicating a discrimination on the basis of sex in violation of Section 8(e) of the Human Relations Ordinance.

Thus having found that it is a violation of the Ordinance for an employer to place an advertisement in a sex-segregated column, the issue remaining is whether the Press aids or participates in the commission of the violation.

As argued by the National Association of Women Lawyers in its brief:

> "There is no unusual legal meaning to words such as 'aid' or 'participate.' 'To aid means to give help or support, to further facilitate, assist, contribute to, be of use, help. U. S. vs. 2000 Plastic Tubular Cases 231 F. Supp. 236, 239 (M. D. Pa. 1964).' Without the aid and participation of the Pittsburgh Press, advertisements could not be published in its daily classified sections with sexually-segregated headings. It is the newspaper rather than the advertiser that selects the language of column headings for its classified pages."

We accept this argument. As Mr. Seli stated:

> "Q. — Mr. Seli, with reference to job opportunity, does the Press offer anything other than what is shown on this tear sheet with reference to classification?
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> A. — Yes. We have 'jobs-male interest.' We have

'commission sales-male interest,' 'male or female help' — this is a combination classification and 'jobs-female interest' and 'commission sales-female interest.' These are the basic five classifications."

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The Press, as a matter of policy, has created and continues a system of classification; and permits and allows the utilization of that system. We believe that by this action the Press is aiding advertisers in the aforementioned violation. Indeed, advertisers have little choice, since they have only certain columns within which to run advertisements.

The Press argues that certain employers are not covered by the Ordinance, and further that the Ordinance allows for certain positions to be exempted or given a so-called "bona fide occupational exemption." The Press argues that a burden would be placed upon it to check to see whether an employer is covered by the Ordinance or if the position to be advertised is exempt. Finally, the Press submits that the Ordinance does not require the imposition of such a burden.

First, let us note that the burden of establishing exemption is upon the employer. The Press need only ask the advertiser if it has an exemption. Section 7(d) of the Ordinance provides that a person may request an exemption certificate. (In the 18 years that Fair Employment Practices legislation has been in force in this City, only two such requests have been made, and both were declined, and no such request has been made since the sex amendment in 1969.)

The Press argues that Section 8 of the Human Relations Ordinance is void for vagueness, in that bona

fide occupational qualifications is not defined, and the Press would be required to speculate as to the meaning.

For the reasons stated hereinabove, we submit there is no need for the Press to speculate, since there is no requirement on the Press to determine whether a position should be granted exempt status.

Section 8 must be read in connection with Section 7(d) which sets forth the procedure for certification of a job as exempt from the operation of the Ordinance by the Pittsburgh Commission on Human Relations. It is our judgment that Section 7(d) sets forth sufficient standards for the Commission to determine whether the position in question should be exmept. The test set forth in Section 7(d) is whether an occupation reasonably requires the employment of a person of a particular race, color, religion, ancestry, national origin, place of birth, or sex. With the standard established, and with no burden on the Press to decide exempt status, we see no basis for objection on vagueness.

Brush vs. San Francisco Newspaper Printing Company, U. S. Dist. Ct. San Francisco, No. C-70 102, June 12, 1970 is not controlling. The issue therein was whether a newspaper was included as an employer, employment agency, or labor union, within the mean- of the 1964 Civil Rights Act, Title 42 U.S.C. Sec. 2000 E-3(b). Clearly this is not the issue in this case. No claim has been made that the Pittsburgh Press is an employer, employment agency, or labor union, within the meaning of the Ordinance.

Finally the Press argues, that the complaint involved violates the Commission's Rule 2(c) (5) in that the complaint alleges the violation occurred "on or

about September 10, 1969 and before." Rule 2(c) (5) states that, if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred must be stated.

Rule 2(c) (5) requires that the complainant state the date or dates to the best of the complainant's knowledge and information. What is challenged in this case is a system of classification, which the Press did use on September 10, 1969. Further the Press used that system for so many years before, that the complainant should not be required to state the date when this system was first implemented. Finally the Press has continued to use that system, with the modifications discussed above since September 10, 1969 to date.

We find no violation of Rule 2(c) (5).

FINDINGS OF FACT

1. The Pittsburgh Press is a newspaper of general circulation, and is engaged in business as a newspaper within and without the City of Pittsburgh.

2. The National Organization for Women is an organization which has as one of its purposes combatting discrimination on the basis of sex. The Pittsburgh Chapter of the National Organization for Women has an office within the City of Pittsburgh.

3. In 1969, the Pittsburgh Press ran a total of 248,000 help-wanted advertisements in its daily and Sunday editions.

4. Of this advertising, 25 per cent is placed by advertisers based in the City of Pittsburgh.

5. The Pittsburgh Press permits the advertiser to select the column within which its advertisement is to be inserted.

6. When an advertiser does not indicate a column, the Press asks the advertiser whether it wants a male or female for the job and then inserts the advertisement in the jobs-male interest or jobs-female interest column accordingly.

7. Prior to October of 1969, the Pittsburgh Press carried headings or captions on its relevant employment columns as follows: "Male Help Wanted," "Female Help Wanted," and "Male-Female Help Wanted."

8. From October of 1969 to the present time, the captions read: "Jobs-Male Interst," "Jobs-Female Interest," and "Male-Female."

9. The Pittsburgh Press is an agent for the Pittsburgh Post-Gazette in the processing of employment advertisements.

10. The Pittsburgh Press is the twelfth largest classified advertisement newspaper in the United States. The approximate circulation of the Pittsburgh Press daily is 350,000 and on Sunday 750,000.

CONCLUSIONS OF LAW

1. The Pittsburgh Commission on Human Relations has jurisdiction of this case.

2. The Human Relations Ordinance is constitutional generally, and in its application to the facts of this case.

3. It is an unlawful employment practice for an employer, employment agency, or labor organization to

cause to be published an employment advertisement in a newspaper column, which column contains a caption with a designation as to sex.

4. The Pittsburgh Press is in violation of the Human Relations Ordinance, specifically Section 8(j) thereof, by maintaining a classification system of employment advertisements with captions containing designations as to sex.

5. The Ordering of the Pittsburgh Press to cease and desist violation of the Human Relations Ordinance is necessary and proper to effectuate the purposes of the Human Relations Ordinance.

6. Preliminary Objections may be filed to a Complaint under the Human Relations Ordinance.

7. The within Complaint is not unlawfully vague and meets the requirements of Rule 2 of the Pittsburgh Commission on Human Relations.

8. The within Complaint states a cause of action.

Appendix.

Order

And Now, to wit, this 23rd day of July, 1970, in accordance with the foregoing discussion, findings of fact, and conclusions of law, it is ordered, adjudged, and decreed that:

1. **The Pittsburgh Press shall, within thirty (30) days from the date of this Order, cease and desist from violating Section 8(j) of Ordinance No. 75 of 1967, as amended, and that**

2. **The Pittsburgh Press shall, within thirty (30) days from the date of this Order, utilize a classification system of employment advertisements with no reference to sex.**

Pittsburgh Commission on Human Relations

By T. Z. Korsak

IN THE
COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA — CIVIL DIVISION

APPEAL OF THE PITTSBURGH PRESS COMPANY FROM THE ORDER OF THE PITTSBURGH COMMISSION ON HUMAN RELATIONS AT FEP CASE NO. 558	No. S.A. 768 of 1970.

Opinion

MARTIN, J.

This is an appeal from the decision and order of the Commision on Human Relations of the City of Pittsburgh ("Commission") dated July 23, 1970. The appeal by the Pittsburgh Press Company ("Press") was filed on August 2, 1970. Oral arguments were heard, and the various interested organizations were given an opportunity to file additional, supplemental and reply briefs.[1]

1. Six attorneys presented oral arguments to the court. Seven briefs have been filed and three supplemental and reply briefs have also been filed. The American Newspaper Publishers Association represents a membership of 1000 daily newspapers and filed a brief as *amicus curiae*. Another *amicus* brief has been filed on behalf of The Allegheny County Council on Civil Rights, The University Committee for Women's Rights, The Council for Women's Rights, and The American Civil Liberties Union, Greater Pittsburgh Chapter. Briefs were also received from The Women's Equity Action League (WEAL); The National Organization for Women (NOW); The Equal Employment Opportunity Commission (EEOC) in addition to those filed by The Pittsburgh Press Company, and the City of Pittsburgh.

Appendix.

Hearings were held before the Commission on four different days in January and February, 1970, at which time twelve witnesses testified. The decision of the Commission determines preliminary matters of law, contains discussion, finding of fact, conclusions of the law and an order. The record of the proceedings before the Commission has been transcribed and lodged with the court.[2]

By its adjudication, the Commission determined that the system of employment advertisements used by the Press in the publication of its daily newspaper is in violation of the provisions of the Human Relations Ordinance of the City of Pittsburgh. The Press classification system publishes employment opportunities under headings which designate job preference by sex. These designations as to sex, male and female, appear daily in the newspaper column captions.

The Press contends that there is not sufficient evidence that its method of employment advertisements does violate the ordinance of the City of Pittsburgh. The Press also contends that its rights under the Federal Constitution and the Constitution of this Commonwealth have been violated in the proceeding before the Commission.

This is the first time that a state court has been required to rule upon the legality of sex classification in the help-wanted advertising sections of a newspaper[3]

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2. The transcript of testimony before the Commission will be directed to be filed and to be made part of the record before this court.

3. Two Federal Cases have discussed federal statutes. These cases are not controlling on the issues

The matter is now presented for determination pursuant to the *Local Agency Law of 1968*, December 2, P. L. .... No. 353; (53 P.S.-Supp. 11301 et seq.) The *Local Agency Law* sets forth the standards by which this court must review the proceedings in Section 8 thereof (53 P. S.-Supp. 11308).

On October 9, 1969 the National Organization for Women (NOW) filed a complaint with the Commission whereby the Press was accused of discriminatory practice relating to employment. In the complaint the Press was charged with deliberate and constant violations of Section 8 (j) of the Human Relations Ordinance of the City of Pittsburgh ("Ordinance"): Ordinance No. 75, approved February 28, 1967, as amended by Ordinance No. 395, approved July 7, 1969.

The complaint sets forth that the Press . . . "policy of allowing employees to place advertisements in the male or female columns, when the jobs advertised obviously do not have bona fide occupational qualifications or exceptions, is unlawful".

The Press filed an answer to the complaint which contains factual allegations which are undisputed, and also contains legal objections to the complaint. Prior to the filing of the answer an informal meeting was held with representatives of the Press and the Commission present. The Commission ordered a public hearing. On January 8, 1970, The American Newspaper Publishers Association (ANPA) was permitted to intervene in the proceedings as *amicus curiae*.

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here presented. *A.N.P.A. v. Alexander*, 294, F. Supp. 1100 (D. C., 1968); *Brush v. San Francisco News Printing Co.*, ... F. Supp. .... (N. D. Cal., 1970).

Appendix.

After hearing, the Commission made findings of fact which can be briefly summarized as follows:[4]

"The Pittsburgh Press" is a newspaper of general circulation inside and outside of the geographic limits of the City of Pittsburgh. NOW is a national organization with an office in the City which has as one of its purposes combating discrimination based on sex.

The Press published 248,000 help-wanted advertisements in the daily and Sunday editions of its newspaper during the year 1969. Because of the scope of classified advertisement of this newspaper it is the twelfth largest classified advertiser in the United States. Only twenty-five per cent of the help-wanted advertisements published by the Press are placed by advertisers located in the City of Pittsburgh. The Press acts as the agent for the "Pittsburgh Post-Gazette" in the processing of employment advertisements.[5]

Prior to October, 1969, the Press published captions for its help-wanted columns as "Male Help Wanted", "Female Help Wanted" and "Male-Female Help Wanted". A change in the captions of its help-wanted columns was effective in October, 1969. From October, 1969 to the present time the Press published captions on its help-wanted columns as "Jobs-Male Interest". "Jobs-Female Interest" and "Male-Female".

The Press permits all of its advertisers to select the proper placement of want-ads within captioned columns.

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4. The findings of fact made by the Commission are contained in the adjudication and are numbered 1 thru 10.

5. The "Pittsburgh Post Gazette" is a newspaper of general circulation published six days each week.

If the advertiser does not designate where a want-ad should be placed, the Press requests such designation and then publishes the ad in the properly captioned column.

In its adjudication the Commission made Conclusions of Law: The order of the Commission dated July 23, 1970 directs that the Press cease and desist from violating Section 8 (j) of the Ordinance and that:

> "The Pittsburgh Press shall, within thirty (30) days from the date of this Order, utilize a classification system of employment advertisements with no reference to sex"

There is substantial evidence to support each of the enumerated findings of fact made by the Commission. The difficult issues which must be decided all arise from the conclusions of law and the order of the Commission. Although other issues are presented and must be decided, three of the eight conclusions of law present the key to the adjudication of the Commission. These three conclusions of law are as follows:

> "3. It is an unlawful employment practice for an employer, employment agency, or labor organization to cause to be published an employment advertisement in a newspaper column, which column contains a caption with a designation as to sex.
>
> 4. The Pittsburgh Press is in violation of the Human Relations Ordinance, specifically Section 8 (j) thereof, by maining a classification system of employment advertisements with captions containing designations as to sex.
>
> 5. The Ordering of the Pittsburgh Press to cease and desist violation of the Human Relations Or-

dinance is necessary and proper to effectuate the purpose of the Human Relations Ordinance."

In effect the Commission decided that there was a violation of Section 8(j) of the Ordinance by the use of any general sex designated column headings in the classified employment section of the Press without regard to any requirement of the law. This is the contention of both the Press and ANPA.

One of the issues to be decided is whether the use of any sex designation in column headings of classified employment advertisement is properly prohibited by the Commission.

The other issues presented for determination involve Constitutional questions. It is contended that the proceedings before the Commission has resulted in violation of the Constitutional requirements of Due process for several reasons. It is also contended that the action of the Commission wrongfully infringes upon an area of Constitutional right protected by the First Amendment to the Constitution of the United States to-wit: freedom of the press. The issues presented by the appeal will each be discussed separately.[6]

Before the substantive issues can be properly decided an understanding of the Ordinance is necessary. The Human Relations Ordinance, No. 75, Feb. 27, 1967,

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6. The Press filed a Petition for Appeal to this court. An "Answer and Counter-Claim" was filed by the City of Pittsburgh on behalf of the Commission on Human Relations. The "Counter-Claim" was not mentioned at the oral argument or in the brief. There does not appear to be any authority to permit a "Counter-Claim" to an appeal under the *Local Agency Law*. This "pleading" is disregarded by the court.

as amended by Ordinance No. 395, July 3, 1969, of the City of Pittsburgh closely follows certain sections of the *Pennsylvania Human Relations Act,* 1955, Oct. 27, P. L. 744 as amended, (43 P. S. 951). Sections of the Ordinance here involved dealing with unlawful descriminatory practices correspond in many areas to the exact language of Section 955 to the above statute (43 P. S.-Supp. 955). All of the briefs do make repeated reference to the Federal legislation which similarly pertains to equal employment opportunity: Title VII, *Civil Rights Act of 1964,* (42 USC 2000 e).

Fundamentally, the Federal and State statute, as well as the local Ordinance, prevent those subject to the legislation from discrimination against any individual solely on the basis of that individual's race, color, religion, *sex,* or national origin cf., 42 U.S.C. 2000 e-2 (a) with 43 P.S.-Supp. 955 (a). In each the action of any covered employer, labor organization or employment agency who discriminates is determined to be an unlawful employment practice. In each statute the word "sex" is used in the same phrase as the other applicable terms.

One of the confusions presented by the instant appeal is that the statutes the word "sex" is treated the same as the words race, color, religious creed, ancestry, age, or national origin. There are some obvious biological differences between male and female which many say requires and justifies a difference in treatment. This difference is recognized by the Pennsylvania statute which sets forth discrimination in employment is unlawful "unless based upon bona fide occupational qualification" (43 P. S. 955). The same

difference is recognized in the Ordinance here involved (Ordinance, Section 8, infra).

Regardless of the biological differences, however, we start with the clear policy of the law that discrimination solely on the basis of sex is as bad as discrimination on the basis of race, color, religion or national origin.

By all of the legislation in this area, federal, state and local, there may be different treatment on the basis of sex and this is discrimination. In order for such discrimination to be legal or permissable it must be discrimination based upon a sound reason. Any difference in treatment on the basis of sex to be legally sanctioned must not undermine the clear policy of nondiscriminatory treatment already referred to. Any discrimination in employment on the basis of sex must be legally sanctioned as a "bona fide occupational qualification" ("BFOQ").

It is equally clear that the Commission made no determination that the Press was guilty of discrimination in any of the three specific categories covered by the law. The Press is not found guilty of discrimination as an "employer", or as a labor organization" or as an "employment agency", as those terms are used in the Federal, State and local legislation. The complaint was not addressed to such a determination.

The entire thrust of the complaint and the decision of the Commission is that the Press is guilty of aiding employers, labor organizations and employment agencies *who are* engaged in unlawful employment practices. The unlawful practice of which the Press is

guilty is the publication of sex designation in job classifications.

While one of the *amicus* now argues that the Press could be construed to be an "employment agency", to so hold would be outside thescope of the proceedings before the Commission.[7]

To now permit a change in the theory of the complaint and decision in effort to justify the action of the Commission would support the contention of the Press that the complaint was too vague to be defended.

Section 8 of the Ordinance is applicable to the issues of this appeal. The pertinent language of this section of the Ordinance sets forth:

> "It shall be an unlawful employment practice . . . except where based upon a bona fide occupational execption certified by the Commission in accordance with Section 7, Subsection (d) of this Ordinance:[8]
>
> (e) For any employer, employment agency or labor organization to publish or circulate, or to cause to be published or circulated, an notice or

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7. While not passing on the merits of this contention it is noted that a Federal District Court has recently decided that a newspaper is not an "employment agency" as that term is used in the *Civil Rights Act of 1964*: *Brush v. San Francisco Newspaper Printing Co.*, F. Supp.—(U.S.D.C. No; Calif. 1970).

8. Section 7, subsection (d), given to the Commission the power to certify upon the request of any person an exemption from the provisions of the Ordinance as a bona fide occupational requirement.

advertisement relating to employment or membership which indicates any discrimination because of race, color, religion, ancestry, national origin or place of birth or sex.

(j) For any person, whether or no an employer, employment agency or labor organization *to aid*, incite, compel, coerce or participate in the doing of any act declared to be an unlawful employment practice by this ordinance, or to obstruct or prevent any person from enforcing or complying with the provisions of this ordinance or any rule, regulation or order of the Commission, or any attempt directly or indirectly to commit any act declared by this ordinance to be an unlawful employment practice."

It has been noted that in some regards Section 8 of the Ordinance closely follows the State Legislation. (*Human Relations Law*, supra, Section 5 as amended, 43 P. S.-Supp. 955). The above provisions of the Section 8 (e) of the Ordinance are comparable to Section 5 (b) (2) of the State Statute (43 P. S.-Supp. 955 (b) (2). Likewise, Section 8 (j) of the Ordinance, set forth in full above, finds a like provision in the statute, supra (Section 5 (e), 43 P. S.-Supp. 955 (e).

Within the context of employment advertising, Section 8 (e) of the Ordinance forbids certain employers, employment agencies, and labor organizations from indicating in any advertisement a discrimination on the basis of sex, in addition to other bases not herein relevant. It is important to note that Section 8 (j) of the Ordinance applies to "any person", and not

just to employers, employment agencies and labor organizations. (See also, Section 5 (e), supra).

It is also important to recognize that several exemptions are provided in the Ordinance. Section 4 (c) specifies that employers with less than five employees are not covered by the Ordinance. Section 3 provides that only unlawful employment practices committed within the territorial limits of the City of Pittsburgh are proscribed by the Ordinance.

An exception, already referred to, is set forth in Section 8, which provides that a covered entity may discriminate on the basis of sex in denying employment, if sex is a "bona fide occupational qualification" for the particular duties. As a result of this exemption, then, an employer covered by the Ordinance may decline to hire an individual solely on the ground of the prospective employee's sex, provided, however, that sex is a "bona fide occupational qualification" for the job. However, such exceptions (BFOQ) must be granted by the Commission after application in accordance with Section 7 (d) of the Ordinance.

The Commission seeks to bring the Press under the Ordinance through Section 8 (j). This is sought to be accomplished by the determination that a newspaper may be guilty of aiding or participating in discrimination by placing advertisements under sexually designated columns on behalf of its customers who may be employers, employment agencies or labor organizations covered by the Ordinance. The Commission interprets Section 8 (j) to mean that the maintenance of sexually designated column heading offends the Ordinance and makes the newspaper publisher an "aider or abettor" of an unlawful employment practice.

Organizations such as NOW may petition the Pittsburgh Commission on Human Relations for relief under Section 13 (a).[9] The aggrieved party must file a signed, written complaint setting out the person and his address who allegedly committed the unlawful employment practice. Section 13 (b). In this written complaint, the particulars of the alleged unlawful employment must be set forth.

While some proponents of "Women's Liberation" may seek to abolish all differences between the sexes this not before the court.[11] The issue before the court is whether there is invalid difference in treatment in employment opportunity not sanctioned by law through the use of the general male and female captions. Any such invalid treatment on the basis of sex should not be sanctioned because it may result in invideous economic discrimination as well as unequal opportunities for personal attainment on the basis of a person's sex. The court is not interested in changing our culture to conform to some found in the South Pacific as some women's liberators seem to hope. Recognizing that male and female differences exist, the issue is whether there is invalid discrimination in employment opportunities on the basis of sex.

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9. Section 13 (a) provides that such a complaint may be initiated by the Commission, by an individual or an organization having one of its purposes the combating of discrimination. The complaint in the instant case was initiated by NOW, one of the organizations embraced by Section 13 (a).

11. Some female opponents of "Women's Liberation" want to take advantage of the inequality in the sexes recognized in our culture and manners, but this is not before the court.

The liberty which is guaranteed in our free society has long included recognition that the right to employment is included therein. *Commonwealth v. Samuel S. Brown,* 8 Pa. Super. Ct. 339 (1898); *Traux v. Raich,* 239, U. S. 33, 41 (1915). Difference in treatment may be unlawful if there is no valid basis for such discrimination *Morey v. Doad,* 354, U. S. 457, 77S. Ct. 1344 (1957). See also, Ordinance Section 4 (b).

The proceedings before the Commission have all been in accordance with the foregoing terms of the Ordinance of the City of Pittsburgh.

It should be clear that the Order of the Commission is limited to the prohibition of column captions on the general basis of sex and is not directed toward the body of the ad. Thus, where sex, race, creed, national origin, or religion is a bona fide occupational qualification for a particular job, the body of the advertisement could include sufficient information to indicate the special nature of the position. The Order of the Commission does not prohibit the use of adequate job descriptions, or classification of help wanted advertising into occupational categories for reader and employer convenience.

The brief of the City of Pittsburgh sets forth the example that under previous Commission rulings, an ad headed "Catholic Stenographer" would constitute discriminatory advertising, but guidelines for the Commission and other Human Relations Agencies would permit an advertisement stating "Stenographer for Catholic Diocesan Office".

If there is a vacant position for an attendant for a male rest room, the employer may seek an occu-

pational certification. However, even without such certification, an advertisement which stated "Attendant for Male Rest Room" might be permissable. Likewise, in job opportunities for actors, actresses, dancers and similar categories sex may be a necessary prerequisite. In that event the requirement of sex could be clearly stated in the body of the advertisement.[10]

The evidence establishes that the Press requests that its advertisers indicate a preference as to where any employment ad is placed. There was no evidence offered to show that the preference of the advertisers is based in any way upon any specific bona fide occupational qualifications as certified by the Commission or based upon any exemption or exception to the operation of the terms of the Ordinance.[12] Nor is there evidence that the Press questions its advertisers about any exceptions when it requires that a preference *be* designated.

It has been noted that the clear policy of the law is to preclude unlawful difference in treatment in employment based upon sex unless such different treatment is warranted for good reason. The Press contends that the sex classification is justified, desirable and dictated by

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10. New York Newspapers have eliminated columns classified on the basis of sex and have not created havoc in the entertainment industry in that city. This court does not have before it a ruling which governs content of advertisement.

12. The findings of the Commission indicate a change in the three designations of column headings used in 1969. There was a change from "Female Help Wanted" to "Jobs-Female Interest", etc. The court fails to see any difference in the legal affect of the change in terminology nor is any argued.

reader preference. However, in reality the testimony of the employee of the Press clearly established that it is not the preference of the reader, but the preference of the prospective employer which dictate ad placement under one caption or another.[13] The disclaimer of unlawful discrimination published by the Press is not effective to establish compliance with the policy against unlawful discrimination and this is not argued or briefed.

Both the Press and the ANPA contend that the determination by the Commission that the present classification violates the Ordinance is erroneous, but for different reasons.

The evidence before the Commission establishes that at least one customer had increased costs of advertising because of duplication of ads in both male and female columns. There is evidence about tests and studies from which the Commission could conclude that the more attractive employment opportunities consistently appear in the male classification. There is evidence that the classification system used by the Press discourage women from application for jobs classified for male interest.[14]

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13. The classification system is similar in result to the "separte but equal" doctrine set forth in *Plessy v. Ferguson,* 163 U. S. 537, 16 S. Ct. 1138 (1966), and now discredited. It was long contended that blacks preferred separate accommodation just as readers prefer different captions by sex. See also, *Loving v. Virginia,* 383 U. S. 1 at 8, S. Ct. 1317 (1967), as to equal application theory in penal laws.

14. Transcript, Leland P. Deck, pp. 45-55, (1/15/70) Transcript, Catherine West, pp. 84, (1/15/70) Transcript, Barbara Cloud, pp. 106-108, (1/15/70) Transcript, Sandra Bem, pp. 13-15, (2/26/70)

All of the testimony has been reviewed. There is substantial evidence from which the Commission could determine that the system which the Press seeks to sustain does aid in discrimination in employment based upon sex, and not based upon difference in treatment sanctioned by the law.[15] The conclusion is reached after full consideration that there are biological and psychological differences between male and female which may be the proper basis for differences in employment. The question remains as to whether when we take all of the above to be true, the action of the Commission is proper under the law.

The Press contends that there is no substantial evidence in the record of a single violation of the Ordinance by a specific employer, employment agency or labor organization and that such proof is necessary as a matter of law. [16] It is true that there is no substantial evidence that a designated advertiser in the Press is guilty of unlawful discriminatory practice in employment. The theory of the Press is that in the absence of evidence that a specific advertiser did use its columns and was guilty of an unlawful discriminatory practice there can be no order restraining the Press.

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15. We agree with the Press that much of the testimony before the Commission is of no probative value in the determination of the issues.

16. These arguments go to the validity Conclusions of Law Nos. 3 and 4. This is the foundation also for the Press and the ANPA argument that to sustain the position of the Commission results in the violation of their rights to Due Process of Law under the Constitution. The ANPA contends that the order of the Commission is invalid because it is so broad that its application would violate the terms of the Ordinance itself.

The City of Pittsburgh ("City") in its brief contends that it is not necessary to prove a single specific act of unlawful employment practice to sustain the decision under the law. The City contends that in the absence or reliance by the Press upon exemptions or exceptions provided by the Ordinance, and in view of the clear policies of the law against discrimination, the Commission did properly determine that the classification system itself is unlawful under Section 8 (j). [17]

To sustain the theory of the determination by the Commission the City cites cases dealing with unlawful racial discrimination *Brown v. Board of Education,* 347, U.S. 483, S. Ct. 683 (1954) and *Pennsylvania Human Relations Commission v. Chester School District,* 427 Pa. 157 223 A. 2d 290 (1967).

The City also urges that because of the nature of the crime of discrimination and because of the difficulty of proof thereof, the conclusion that the system itself is unlawful is justified. The difficulty of proof of any discrimination is well known: *Holland v. Edwards,* 119 N. E. 2d 581, (N. Y. 1954): *Woolworth Co. v. NLRB,* 121 F. 2d 658, 660 (CCA 2d 1941).

It has been determined that the unlawful practice is the general *designation of sex* in the caption. Sex classification is as unlawful as general captions of "Black", "White", "Catholic", "Presbyterian", "Italian", "Polish" or "German" would be unlawful. This court will not re-

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17. It is not argued that the case of the female who testified that she applied for and was refused employment as a dishwasher in response to an ad under the male interest classification established unlawful discrimination.

verse the determination that sex is an unlawful general designation just as any other comparable designation which uses sex, race, religion, or national origin would be contrary to law. The Commission found that males are given preference in one segregated column and females are given preference in another column without any relation to exceptions or exemptions permitted by the local and state legislation. Inherent in the adjudication of the Commission is the determination that with the aid or participation of the Press, employers, or employment agencies are permitted to easily defeat the clear policy of the law.

There is substantial evidence that a general male and female classification is harmful without proof of a specific violation. The general classification on the supposed basis of reader preference does offer to others the opportunity to evade responsibility for unlawful discrimination. The evidence indicated that reader preference is, in reality, employer preference and this presents a screen not easily pierced to determine actual employer discrimination. The Press is not responsible for possible employment discrimination. The vehicle by which the law may be defeated by an employer through use of general sex captions is the responsibility of the publisher and is found to be bad.

Reference to sex in the body of an ad is not automatically preclude by the adjudication of the Commission.[18] Any reference to sex in the advertisement may

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18. There is reference in footnote 2 of the adjudication by the Commission to a meeting and a policy of the Press concerning content which is not before the court.

well place the responsibility for discrimination with the advertiser where it belongs.

The language of both state and local law indicates that the legislative intent was to afford sex the same protection as race, religion and other designations. It is not within the power of this court to legislate a different result in one category than in another. If the legislators do not intend sex to be treated as race and religion as a basis for discrimination, the clear language of the law should be changed.

The ANPA contends that the order is so broad that it would violate the terms of the Ordinance which recognizes exceptions or exemptions. It is argued that the captions designating male and female are necessary so that when sex is a legitimate bona fide occupational qualification persons may advertise and so that persons not covered by the Ordinance may advertise in such columns.

The qualifications, exemptions and exclusions of the Ordinance which permit certain discrimination are just as applicable to race, color, creed, ancestry and other categories as they are applicable to the category of sex. It is not suggested that captions bearing racial or other references should be necessary to the operation of a newspaper. Likewise, it is not contended that racial or religious captions are necessary to permit those employers to advertise who may properly take advantage of legal exceptions or evemptions and who may discriminate on such grounds with immunity.

II

The evidence fails to establish any relationship between the general male and female captions of adver-

tisements used by the Press and bona fide occupational qualifications or any other exceptions or exemptions to the legislation which would permit such a difference in treatment based upon sex.

The language of the Order of the Commission is extremely broad. We interpret the Order to preclude the general captions presently in use without regard to exception or excemption. We do not pass upon possible general captions which may be permissible because of legitimate exceptions to the Ordinance.[18a] By the same reasoning, this court does not interpret the present ruling of the Commission to require the Press or any other publisher to censor the content of an advertisement. The matter of *content of an advertisement* which makes reference to sex, race or religion is *not* before the court.[19]

The ANPA contends that the Commission Order is too broad because it makes no provisions for employers who are outside the geographical confines of the City of Pittsburgh and who utilize the classified advertisement columns of the newspaper. The publication by the Press within the geographical limits of the city subjects the Press to the jurisdiction of the Commission.[20]

18a. Likewise, failure to define exceptions or exemptions which may properly be granted under Section 8 of the Ordinance was not before the Commission and is not before this court.

19. It has been noted that the only reference to content of advertisements in the adjudication by the Commission is contained in one footnote. There is nothing in the Order of the Commission pertaining to the content of advertisements.

20. The language of the Pennsylvania Human Relations Act, supra, is similar to that of the Ordinance. If the Pennsylvania Human Relations Commission en-

In *Hill v. Fetherolf*, 236 Pa. 70, 78 (1912) the Pennsylvania, Supreme Court upheld the right of the City to require the inspection of the farms of out-of-city milk producers when the milk was offered for sale in the City.

An out-of-city employer is not subject to the Ordinance at the site of his business. However, if an employer or any one else elects to recruit employees through publication within the territorial boundaries of the City, he must comply with the Ordinance.

A labor union or employment agency, located within the City of Pittsburgh is subject to the Ordinance when recruitment is done within the confines of the City. Any unlawful discrimination is such recruitment would be subject to the Ordinance even if the prospective employment is elsewhere.

It is contended that the complaint is so vague as to violate rights under Federal and State Constitutions. It is argued that the charges could not be defended because of lack of notice. It is also argued that the Press could not be found guilty of violation of Section 8 (j) because it was charged with aiding persons un-named.

III

It is contended by the ANPA that because Section 8 (j) forbids persons from aiding and abetting the violation of the Ordinance, it is elementary that the com-

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tered an appropriate order for newspapers outside of the City of Pittsburgh after proceedings under the statute it would be for the court to determine the validity of that Order. Hopefully, any decision based upon the same facts and statutory language would be consistent with this opinion.

plaint must set forth the act and the persons who were aided and abetted by respondent.

These matters were all raised by the Press before the Commission. Each is discussed in the adjudication by the Commission.

After filing the complaint the Commission held a pre-hearing conference and, at the request of the Press, the public hearing was delayed until January 15, 1970. The Commission also granted a two-week recess after close of complaints case to afford additional time for the Press to prepare its defense. The adjudication of the Commission determines the Press to be in violation of Section 8 (j) of the Ordinance as charged.

From the language of the complaint, from the pre-hearing proceedings, and from Section 8 of the Ordinance itself certain things should have been obvious to the Press. The Press had notice that it was accused under Section 8 (j) to the Ordinance of *participation in the publication of advertisements* contrary to law. It should also have been obvious that the above quoted language puts in issue the policy of allowing employers to place advertisements in the general male and female columns "obviously", without regard to the Ordinance.

The language of the Ordinance, supra, when read with the quoted language of the complaint afforded adequate notice. The contention that the charges were vague is without merit in these circumstances.

This is an appeal from an administrative proceeding. The issue of the alleged failure to state a cause of action is governed by what has already been discussed in this opinion. In administrative proceedings:

"The pleading may be informal, and the sufficiency of the statements therein is not to be measured by the requirements of the Complaint or initial pleading in a court proceeding, whether civil or criminal". *Am. Jur.* 2d., Administrative Law, Section 371.

The section under which the Press was accused makes it a violation of the Ordinance to aid or participate in the permitting of others to place advertisements in general male and female columns with obvious disregard to the law.

The complaint of NOW sets forth:

"The National Organization for Women charges the Pittsburgh Press with deliberate and constant violations of Section 8 (j) of the Human Relations Ordinance, as amended by Ordinance 395. The National Organization for Women has attempted on several occasions to convince editors and publishers of the Pittsburgh Press that their policy of allowing employers to place advertisements in the male or female columns, when the jobs advertised obviously do not have bona fide occupational qualifications or exceptions, is unlawful."

The defense was based upon the theory that the Press had a right to rely upon preference of readers. It has been noted that from the evidence the Commission could have determined that the reader preference was in reality advertiser preference. Even if the Press did demonstrate that its policy is preferred by the reader, such preference must way to the clear language of the legislation which precludes unequal treatment solely on the basis of sex. The overriding determination by the

Commission is that the policy of the Press is bad even though it is firmly entreached in tradition.

IV

If the readers of even the court prefers discriminatory treatment on the basis of sex, this is of no consequence while the legislation reads as it does.

This court will not reverse the Commission. There was sufficient evidence from which the Commission could determine that the policy of the Press is obviously in total disregard to the provisions of the law. In these circumstances it was not necessary that the wrongful act of a named advertiser be shown.

In its adjudication the Commission sets forth that two employers have applied for exemption in the eighteen years that the Ordinance has been in effect. No requests for exemption to the Ordinance have been made since sex was added as a category. In view of what has already discussed and because of the circumstances this court determines that the conclusions of law made by the Commission are proper.

The decisions in criminal cases cited in support of appellant's arguments are not controlling in this matter. This court does not believe that a "participant" can be equated with an "accomplice" as that word is used in our criminal decisions.

The appellant complains that the Order of the Commission is invalid by operation of the Fifth Amendment to the Federal Constitution which prohibits laws abridging the freedom of the press. The ANPA contends that this constitutional right is violated because the action of

the Commission requires the Press to act as a censor or enforcement agency with its advertisers.

It is conceded that there may be valid legislation to regulate the commercial aspects of a newspaper. *Newspaper Advertising Act of May 16, 1909,* P.L. 1784, 45 P.S. 1; *Sharon Herold v. Mercer County,* 132 Pa. Super. Ct. 245 (1938). It is difficult to think of a more commercial aspect of the newspaper than captions to the classified advertisement section.

Certainly the Commission is attempting to regulate particular aspect of the newspaper in that classified advertisements may not have captions found to be discriminatory. The regulation of captions to columns which is imposed by the Commission is pursuant to the clear policy of the law which prohibits certain discrimination. This policy against discrimination is clearly established in the ordinance as well as in State and Federal legislation to which reference has already been made. Any restriction on freedom of expression may be no greater than necessary to prevent the harm resulting in the absence of such regulation. What is prohibited is simply the general sexual classification of advertisements. No advertisement is prohibited. No expression of opinions by the Press is prohibited.

The Order of the Commission in no way interferes with the editorial or news content of the newspaper. The Press may continue to express its editorial views with freedom. It may editorialize on this elimination of sex-segregated column headings or any other position related to the status of women supported by the publisher and editor. It may report the news on the subject as it sees fit.

This court does not consider the restriction imposed on the Press as violative of its rights under the First Amendment to the Federal Constitution in the circumstances here present.

It has already been noted that the Commission may not require the Press to censor the content of its classified advertisements. It has also been noted that the Order of the Commission is a broad one. The Press has a legitimate cause for alarm if the action is an attempt on the part of the Commission to impose duties of censorship or enforcement.

The action of the Commission is justified solely on the basis that the general captions referring to male and female are found to be offensive and that these captions result from the policy of the Press. The elimination of the captions should not be used in an attempt to impose duties on the Press. Any advice given by the Press to its advertisers concerning the possible violation of laws on discrimination by the *content* of the ad is given as a service by the Press. We do not interpret the actions of the Commission to impose any additional duty on the Press.

Any refusal by the Press to accept certain advertisements because of their content would be based upon a policy of the Press or upon some other ruling by the Commission and not by virtue of the action of the Commission now before the court. If the content of an advertisement is unlawful it is for the Commission to prosecute the prospective employer if there is a violation of the law. In order for the Press to be guilty of violation of the Ordinance under Section 8 (j) when the *content* of a specified advertisement is at issue something more must be involved than what is now before the court for determination.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

APPEAL OF THE PITTSBURGH PRESS COMPANY FROM THE ORDER OF THE PITTSBURGH COMMISSION ON HUMAN RELATIONS AT FEP CASE NO. 558	No. S.A. 768 of 1970.

Order

MARTIN, J.

Now, this 24th day of March, 1971, the transcript of testimony before the Human Relations Commission of the City of Pittsburgh is directed to be filed with the Prothonotary. In accordance with the foregoing opinion, the findings of fact and conclusions of law made by the Human Relations Commission of the City of Pittsburgh are proper and the order of the Human Relations Commission is hereby affirmed. The Pittsburgh Press Company is directed to comply with the order dated July 23, 1970, within thirty (30) days from the date hereof.

BY THE COURT
E. J. MARTIN, J.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

PITTSBURGH PRESS COMPANY, Appellant v. THE NATIONAL COMMISSION ON HUMAN RELATIONS, and CITY OF PITTSBURGH, Appellee and THE NATIONAL ORGANIZATION FOR WOMEN, INC., Intervenor-Appellee and THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, Amicus Curiae	No. 315 C. D. 1971

Before:

HONORABLE JAMES S. BOWMAN, President Judge
HONORABLE JAMES C. CRUMLISH, JR., Judge
HONORABLE HARRY A. KRAMER, Judge
HONORABLE ROY WILKINSON, JR., Judge
HONORABLE LOUIS L. MANDERINO, Judge
HONORABLE GLENN E. MENCER, Judge
HONORABLE THEODORE O. ROGERS, Judge

Argued: October 20, 1971

Judge Manderino did not participate in the decision of this case.

Opinion

OPINION BY JUDGE KRAMER January 27, 1972

This is an appeal from an Order of the Court of Common Pleas of Allegheny County dated March 24, 1971, affirming an Order of the Pittsburgh Commission on Human Relations (Commission), appellee, dated July 23, 1970. This Order found the Pittsburgh Press Company (Pittsburgh Press), appellant, to be in violation of the Human Relations Ordinance of the City of Pittsburgh and ordered the utilization of a "classification system of employment advertisement with no reference to sex."

This case was commenced on October 9, 1969, when the National Organization for Women (N.O.W.) filed a complaint with the Commission charging the Pittsburgh Press with "deliberate and constant violations" of Section 8(j) of Ordinance No. 75, enacted into law by the Council of the City of Pittsburgh on February 27, 1967, and as amended by Ordinance No. 395*, approved July 8, 1969. After a conference with the parties, the Commission, on November 3, 1969, found that "probable cause" existed to support the filing of the complaint, and a public hearing was directed to be held. On January 6, 1970, the Pittsburgh Press filed its answer to the complaint, and hearings were held before the Commission on four days during January and February 1970.

The Human Relations Ordinance has been upheld as a valid enactment of the City of Pittsburgh within the authority confered upon the City by the Act of

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*"This amendment added the word "sex" to the list of protected classes.

March 7, 1901, P.L. 20, Article XIX, Section 3, Clause XLIII, 53 P.S. 23158. *See City of Pittsburgh v. Plumbers' Local Union No. 27,* 113 PLJ 7, (1965); *Stanton Land Company et al. v. City of Pittsburgh,* 111 PLJ 9 (1963). Also *see* Act of October 27, 1955, P.L. 744, Section 12.1, as amended, 43 P.S. §961.1.

The "particular" of the complaint of N.O.W. reads as follows:

> "The National Organization for Women charges the Pittsburgh Press with deliberate and constant violations of section 8 (j) of the Human Relations Ordinance as amended by Ordinance 395. The National Organization for Women has attempted on several occasions to convince editors and publishers of the Pittsburgh Press that their policy of allowing employers to place advertisements in male or female columns, when the jobs advertised obviously do not have bona fide occupational qualifications or exceptions, is unlawful."

The pertinent provisions of Section 8(j) of the amended ordinance read as follows:

> "It shall be an unlawful practice . . . except where based upon a bona fide occupational exemption certified by the Commission in accordance with Section 7, subsection (d) of this ordinance: . . .
>
> "(j) for any person, whether or not an employer, employment agency or labor organization, *to aid,* incite, compel, coerce or participate in the doing of any act declared to be an unlawful employment practice by this ordinance, or to obstruct or prevent any person from enforcing or complying with the provisions of this ordinance, or any rule, regu-

lation or order of the Commission, or to attempt directly or indirectly to commit any act declared by this ordinance to be an unlawful employment practice." (Emphasis added)

Section 8 (e) of the amended ordinance declares it to be an unlawful employment practice:

"(e) for any employer, employment agency, or labor organization to publish or circulate, or to cause to be published or circulated, any notice or advertisement relating to employment or membership which indicates any discrimination because of race, color, religion, ancestry, national origin or place of birth, or sex."

Section 7 (d), mentioned in Section 8 (j) above, reads:

"The Commission shall have the power and it shall be its duty to:

"(d) Certify upon the request of any person that a particular occupation or position is exempt from the provisions of this ordinance relating to unlawful employment practices if the Commission finds that the occupation or position reasonably requires the employment of a person or persons of a particular race, color, religion, ancestry, national origin or place of birth, or sex and that such certification is not sought as means of circumventing the spirit and purpose of this ordinance, the burden of proving the facts required for such a finding to be in each instance upon the person requesting the certification of exemption from the provisions of this ordinance."

We should also point out that under definitions in Section 4 of the Ordinance, we find:

> "(b) Discriminate and discrimination — The terms 'discriminate' and 'discrimination' include any difference in treatment based on race, color, religion, ancestry, national origin, place of birth, or sex."

The record in this case clearly shows that the Pittsburgh Press has attempted to eliminate discriminatory employment advertising on the basis of sex and thereby achieve the goals of the Ordinance. Illustrative of this attempt are references in the record to changes already made in its advertising column headings and efforts to eliminate the terms "male" and "female" in the body of employment advertising ads. These changes were effected through negotiation and conference with the Commission. The record indicates an intent and desire on the part of the Pittsburgh Press to cooperate with the Commission in eliminating discriminatory wording in employment advertising. This certainly is commendable and to be expected of the Pittsburgh Press in light of its role as one of the nation's leading civil rights advocates in both word and deed.

The complaint of N.O.W., and this opinion, are restricted to alleged discrimination found in employment advertising column headings. The specific wording of the employment advertising column headings which are at issue in this case are three, namely, "Jobs — Female Interest", "Jobs — Male Interest" and "Male — Female Help".

In view of the fact that the court below did not take any additional testimony or receive any additional evidence, the scope of review of this Court is to deter-

mine whether or not the Commission abused its discretion or committed an error of law. *Gabriele v. Boeing Co., Vertol Division,* 1 Pa. Commonwealth Ct. 96, 99, 272 A. 2d 527, 529 (1971), *Romain v. Middletown Area School District,* 1 Pa. Commonwealth Ct. 419, 421, 275 A. 2d 400 (1971).

It should be pointed out that the record also indicates that the Pittsburgh Press publishes, what was termed in the record as, a "disclaimer" at the beginning of the male and female interest want ads, which reads as follows:

> "Notice to job seekers. Jobs are arranged under male and female classifications for the convenience of our readers. This is done because most jobs generally appeal more to persons of one sex than the other. Various laws and ordinances—local, state, and federal, prohibit discrimination in employment because of sex, unless sex is a bona fide occupational requirement. Unless the advertisement itself specifies one sex or the other, job seekers should assume that the advertiser will consider applicants of either sex in compliance with the laws against discrimination."

In its "Decision and Order" the Commission made ten findings of fact which, upon our review of the record, are supported by substantial evidence. The Commission and the court below concluded that in its employment advertising the Pittsburgh Press was aiding employers in discriminating against women through the use of the above-noted column headings, and therefore was engaged in an unlawful employment practice violative of Section 8(j) of the Ordinance.

The lower court, in a lengthy opinion, affirmed the findings of fact and conclusions of law made by the Commission and directed the Pittsburgh Press to comply with the Commission order on or before May 10, 1971. An appeal was taken to this Court, and we granted the prayer of a petition for a supersedeas, pendente lite. The court below was aided by the participation of a number of amici curiae who filed briefs, two of whom were permitted by this Court to intervene. Briefs were submitted by the Solicitor of the City of Pittsburgh, on behalf of N.O.W. in support of the Commission's Order, and by the American Newspaper Publishers Association (ANPA) in support of the position of the Pittsburgh Press.

The Pittsburgh Press in its brief raises three issues which we will cover in the following sequence. First, the Pittsburgh Press states that the Commission violated its constitutional rights to due process of law by issuing an adverse order based upon a record devoid of any identified, alleged or proven principal offense. Secondly, the Pittsburgh Press argues that its use of the employment advertisement column headings in question does not constitute discrimination as prohibited by the Ordinance. Lastly, the Pittsburgh Press argues that the scope of the order of the Commission as affirmed by the court below exceeds the scope of the Commission's authority and jurisdiction and that it is too broad in proscribing all reference to male and female, in that the Ordinance itself allows certain exemptions.

Due Process

The Pittsburgh Press argues that failure on the part of N.O.W. to specifically allege, prove or identify the principal offense of discrimination renders the Com-

mission's Order invalid in that due process of law was not afforded to the Pittsburgh Press.

The Pittsburgh Press is correct in its assertion that due process of law is as equally applicable to administrative proceedings as it is to judicial proceedings. In *W. J. Dillner Transfer Co. v. Pennsylvania P.U.C.* at 175 Pa. Superior Ct., 461, 468-69, 107 A. 2d 159 (1954) our Superior Court said:

> "Appellant argues it was not sufficiently appraised of the issue in that the complaint set forth and charged a violation of appellant's authority at Folder 3 of A. 61744, whereas the Commission based its finding on violation particularly on an interpretation of authority granted at Folder 2 of A. 61744. Admittedly the requirement of procedural due process applies to proceedings before administrative tribunals as well as judicial bodies. The question of what constitutes a specific designation of the issue raised or charges made depends upon the violation alleged and the type of investigation being conducted. *Armour Transportation Company v. Pennsylvania P.U.C.*, 138 Pa. Super. 243, 10 A. 2d 86; . . ."

In the *Armour* case, *supra* the court at 249 cited its earlier opinion in *National Automobile Corp. v. Barfod*, 289 Pa. 307, 311 137 A. 601, 602 (1927):

> "The requirement of due process of law, however, applies to administrative as well as to judicial proceedings. The doctrine of notice and hearing thus becomes a more potent force in our land, because it applies to the decisions and acts of administrative officials and, unless there are extraordinary emer-

gencies, this essential requisite of due process cannot be dispensed with."

The *Armour* court also said at 250-51:

"There must be due notice and an opportunity to be heard, the procedure must be consistent with the essentials of a fair trial, and the commission must act upon evidence and not arbitrarily. . . . *Railroad Commission v. Pacific Gas & Electric Co.*, 302 U.S. 388, 393, 82 L. ed. 319. The question of what is proper notice, or, as here, of what constitutes a specific designation of the issue raised or charges made, depends necessarily upon the facts of each case, the type of investigation being conducted, the violations alleged, and the penalty or order sought to be imposed. Where the purpose of the investigation by the Commission is only to determine the reasonableness of rates charged by utility, a different standard would seem to apply than where the franchise of the utility is sought to be revoked for violation of the utility laws and a penalty or fine imposed."

The ingredients of due process have been discussed in a multitude of judicial opinions. A reading of many of these cases confirms our understanding that due process of law is afforded when (1) the "accused" is informed with reasonable certainty of the nature of the accusation lodged against him, (2) he has timely notice and opportunity to answer these charges and to defend against attempted proof of such accusation, and (3) the proceedings are conducted in a fair and impartial manner. The Pittsburgh Press does not contend that it was denied an opportunity to defend itself or that it

was denied an impartial and fair hearing. The Pittsburgh Press does insist, however, that it was denied due process of law insofar as being unable to determine from the complaint the nature of the alleged offense. In *Commonwealth v. Acquaviva*, et al., 187 Pa. Superior Ct. 550, 145 A. 2d 407, 410 (1958) the Superior Court adopted the lower court opinion of Judge Laub in which he stated:

> "It is sufficient if the language used is capable of an interpretation which reveals such essentials. Lack of precision is not itself offensive to the requirement of due process. The constitution does not require impossible standards; all that is required is that the language convey sufficient definite warning as to the prescribed conduct when measured by common understanding and practices. *Roth v. United States*, 354 U. S. 476, 77 Supreme Court 1304, 1 L. E. 2d 1498."

Although this was a criminal case, the principle is applicable here.

This is an administrative proceeding and is not restricted by the niceties of common law pleadings. The Pennsylvania Legislature in its wisdom permitted the establishment of local administrative agencies to process complaints and hold proceedings to adjudicate issues concerning certain rights of citizens. It certainly was within the contemplation of the Legislature that such a local administrative agency would be lay-oriented. It was contemplated, and is indeed the reality, that persons not formally trained in the law often serve as human relations commissioners. Similarly, it was to be expected that the complaints and charges would be framed

in the language of laymen. Administrative agency proceedings have never been held to the high standards of the law suit filed in a court of law. In *Kochinsky v. Independent Pier Company,* at 157 Pa. Superior Ct. 15, 41 A. 2d 409, 410-11 (1945), the court said:

> "Proceedings before the compensation authorities are not 'litigation', and the strict rules of pleading and practice applicable to common law actions do not apply. The courts take a liberal attitude toward the pleadings in compensation cases and consider the substance of the relief prayed for rather than its form. . . . Of course, the parties are entitled to know the issue in any particular proceeding so that they may be prepared to meet it by proper evidence.

A determination by this Court that the Pittsburgh Press had sufficient knowledge of the charges against it, thus enabling it to properly defend, would be dispositive of the due process of law question in the instant case. We are in agreement with the Pittsburgh Press argument that the "particulars" (required by the Ordinance) as set forth in the original complaint of N.O.W. lacked some specificity. Nevertheless, we hold that the complaint particulars were adequate and sufficiently specific under the test of fairness. We hold that the Pittsburgh Press was properly and adequately informed of the charged violation of Subsection 8(j) of the Pittsburgh Human Relations Ordinance, as amended. The appellant newspaper had notice and knowledge of the charge that it was aiding employers to unlawfully discriminate by the placing of employment advertisements under the arbitrarily segregated male and female columns on the advertising pages of the newspaper.

The Pittsburgh Press was afforded all of the protection required in the proceedings before the Commission, and therefore we hold that the Pittsburgh Press was not denied its constitutional right to due process of law.

Counsel for the Pittsburgh Press further argues that an additional deficiency in the complaint was the lack of any specific incident wherein column segregated employment advertisements resulted in sex discrimination to a particular woman.

The nature of the charge herein filed is discrimination against a class (women). It is well established that when the Legislature proscribes discriminatory acts against a class it is unnecessary for the complaining class representative to allege specific injured parties. *See Pa. Human Relations Commission v. Chester School District,* 427 Pa. 157, 233 A. 2d 290 (1967). If the advertising column headings here are discriminatory, they are in violation of the Ordinance per se, and there need not be a specific "particular" on an actual discrimination suffered by any particular woman. If discriminatory, the column headings were in violation before the first woman actually suffered any act of discrimination.*

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*We note with interest the language of the Pa. Human Relations Commission, Guidelines On Discrimination Because of Sex, Pa. Bulletin No. 24, Vol. 1, p. 707, Dec. 19, 1970, "The placement of an advertisement seeking applicants for employment in a classified advertisement section under 'Help Wanted - Male,' or 'Help Wanted - Female Interest' or similar columns with a sex designation is considered to be a violation of §5(b)(2) [Pa. Human Relations Act, Act of July 9, 1969, P.L. 133, 46 P.S. 955] if an employer is covered by the Act and has not received a bona fide occupational qualification exemption from the Commission."

We note here that contrary to the argument of the Pittsburgh Press that the record does not disclose any specific incident of discrimination against any specific woman, a careful reading of the record indicates that one witness did in fact testify to such a result. Her testimony indicated that she responded to an ad placed in the "Jobs - Male Interest" column for a "dishwasher" and was advised by an agent of the employer that he had been given specific instructions not to hire a female for the advertised job. The interesting point is that counsel for the Pittsburgh Press, while arguing that this testimony was irrelevant, admitted on the record that this witness may well have had legitimate grounds upon which to file a complaint before the Commission. In view of the fact that the discriminatory practice came about as a result of an ad placed by the employer and was published in an arbitrarily segregated "male" column, we hold that there was substantial evidence placed in the record to support the charge made by N.O.W.

VIOLATION OF THE ORDINANCE

The Pittsburgh Press argues that its manner of job classification column heading arrangement was selected for the purpose of providing maximum aid to both the advertiser and the job applicant. The Pittsburgh Press insists that this manner of arranging employment advertisements is oriented to the interests of persons seeking employment. The record does not support this contention. The record clearly demonstrates that this sex segregated system of want ad column classification is geared primarily to the interests and desires of employers. The Pittsburgh Press further argues that in the event discriminatory motivations are found on the

part of a particular employer, nevertheless the Pittsburgh Press is exculpated by way of the prior cited "disclaimer".

We have long passed that point in the advancement of civil rights whereby a declaration of intent can be used as a screen or defense for actual discrimination. The "separate but equal" principle is no longer a legitimate argument in civil rights cases. We agree with counsel for the Pittsburgh Press when he states, "The purpose of the statute was to prohibit practices which denied job opportunities to individuals because of sex." The Pittsburgh Press cannot frustrate that purpose by a declaration that column headings are arranged for a reader's convenience and that any recourse to be had by women lies against those employers who do in fact discriminate.

The right to work and its concommitant opportunity to achieve economic security and stability are essential to the pursuit of life, liberty and happiness. As early as 1915, the United States Supreme Court declared that:

> ". . . the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment [Fourteenth] to secure. *Truax v. Raich,* 239 U.S. 33, 41, 60 L. ed. 131, 135 (1915)."

To anyone who even once has viewed women participating in a roller derby, the argument that all women are the weaker sex, desirous of only the more genteel work, carries little weight. The success of women jockeys is further evidence of which we can take notice. It is no longer possible to state that all women desire, or have

an "interest" in, any one type or classification of work. Some women have the desire, ability and stamina to do any work that men can do. Once we accept such a premise it then becomes logically impossible to permit continued segregation of employment want ads by column headings for any job coming within the purview of the Ordinance.

The law recognizes few absolutes and the necessity to recognize the legitimate exceptions continues. As a society we continue to recognize the existence of certain differences between men and women and consequently, exceptions permitted under Section 8 of the Ordinance, *supra,* by certification of the Commission are a legitimate and proper method to differentiate, provided that such grants are both reasonable and legal. Any employer having a legitimate need to so advertise may apply for the legislatively recognized exemption. Interestingly, both the Pittsburgh Press and the ANPA agree that in the absence of an exemption, the Pittsburgh Press could not utilize column headings such as "Jobs - Black Interest" or "Jobs - White Interest" or "Jobs - Catholic Interest" or "Jobs - German Interest", etc.

The appellants argue that the discrimination cases are analogous to the "false advertising" cases, wherein the courts have held that a newspaper cannot be held liable for the false advertising of an advertiser. We feel compelled to reject the analogy for the reason that the maintenance of segregated column headings in and of themselves is indicative of a newspaper's participation in an illegal discriminatory scheme. On the other hand, the simple publication of a particular advertisement

later found to be false, without proof of complicity, actual or constructive, casts no shadows of liability onto a newspaper.

This is not a matter of whether the Pittsburgh Press intentionally conspired with some employer or employers to discriminate against women. What is of importance is that through the use of its arbitrarily selected column headings the Pittsburgh Press "aids" such employers to discriminate. When the Pittsburgh Press arbitrarily arranges and publishes such column headings it is aiding in sex discrimination. The ruling that employment want ad column headings be written asexually is appropriate because it eliminates the difficulties of evaluating sophisticated medical, sociological, and actuarial theories of aggregate differences between the sexes. It is proper because it represents the highest degree of societal commitment to the ideal of legal sexual equality. Perhaps more importantly, asexual employment advertising column headings will aid in guaranteeing women their fundamental right to be hired and judged on the basis of individual characteristics and capabilities.

The Pittsburgh Press and ANPA argue that a distinction exists between sex and other protected classes. To the contrary, we hold that acts of discrimination prohibited by this Ordinance apply *equally* to "any difference in treatment based on race, color, religion, ancestry, national origin, place of birth, or sex".

There is not one word to be found in the Ordinance which could support appellants' argument that discrimination on the basis of sex is to be treated any differently than discrimination in any of the other categories. Sex,

like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth. What differentiates sex from the so-called "nonsuspect statutes", such as intelligence or physical disability, and aligns it with the recognized "suspect" classification (race) is that the characteristic usually bears no relation to ability to perform or contribute to society. The result is that the entire class is abrogated to an inferior legal status without regard to the capabilities or characteristics of its individual members. Women, like blacks, have historically labored under legal and social disabilities. Like black citizens, for many years they were denied the right to vote and until recently were unable to serve on juries in many states. Married women in this state were placed in a different position vis-a-vis their property rights. None of these distinctions was based upon legitimate differences. The pedastal upon which history and the law have placed women has evolved into an isolation booth, far removed from the rights afforded the rest of society.

In *Sail'er Inn, Inc., et al. v. Kirby,* 95 Cal. Rptr 329, 334, 485, P. 2d 529, 534 (1971), the California Supreme Court refused to uphold legislation designed to protect women in not permitting them to work behind a liquor bar. The Court said:

> "But even if we assume that bartending is more dangerous than waiting on tables, there is no evidence that women bartenders are more likely than male bartenders to suffer injury at the hands of customers. A desire to protect women from the general hazards inherent in many occupations cannot be a valid ground for excluding them from those occupations under Section 18. Women must

be permitted to take their chances along with men when they are otherwise qualified and capable of meeting the requirements of their employment."

In *Weeks v. Southern Bell T. & T. Co.*, 408 F. 2d 228, 236 (1969), the Court stated:

"What does seem clear is that using these class stereotypes denies desirable positions to a great many women perfectly capable of performing the duties involved . . . Moreover, Title VII* rejects just this type of romantic paternalism as unduly Victorian, and instead vests individual women with the power to decide whether or not to take on unromantic tasks. Men have always had the right to determine whether the incremental increase in remuneration for strenuous, dangerous, obnoxious, boring or unromantic tasks is worth the candle. The promise of Title VII is that women are now to be on equal footing. We cannot conclude that by including the bona fide occupational qualification exception Congress intended to renege on that promise. . . . The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group. (And at page 235) We conclude that the principle of non-discrimination requires that we hold that in order to rely on the bona fide occupational qualification exception, an employer has the burden of proving that he had reasonable cause to believe, that is, a factual basis for believing, that

*"Title VII" refers to the Civil Rights Act of 1964, 42 U.S.C. 2000 (e).

all or substantially all women would be unable to perform safely and efficiently the duties of the job involved.

This quotation captures the essence and purpose of this Pittsburgh Ordinance.

The state of a human being without a job is a neutral fact, equally applicable to both sexes. The finding of a job should also be a neutral fact, equally accessable to both sexes.

In *Richards v. Griffith Rubber Mills,* 300 F. Supp. 338, 340, (D. C. Or. 1969), the United States District Court held that refusal to hire a qualified woman job applicant could no longer be supported by reliance on a state law and ruled as follows:

". . . Except in rare and justifiable circumstances . . . the law no longer permits either employers or the states to deal with women as a class in relation to employment to their disadvantage. . . . Individuals must be judged as individuals and not on the basis of characteristics generally attributed to racial, religious or sexual groups."

In the case of *Reed v. Reed,* not as yet reported, but handed down by the United States Supreme Court on November 22, 1971, 40 LW 4013, where the Court held unconstitutional those portions of an Idaho statute giving preference to males in the granting of letters of administration in estates, the Court said:

"So long as the law deals only with a characteristic found in all (or some) women but no men, or in all (or some) men but not in women, it does not ignore individual characteristics found in both

sexes in favor of an average based upon one sex. . . . Differences should not be based upon the qualities of male or female but upon the characteristics and abilities of the individual."

We are guided by such pronouncements.

Finally, under this section, ANPA also raises the specter of an alleged violation of the newspaper's constitutional right to "freedom of the press". We hold this argument to be non-meritorious. A restriction on discriminatory column headings in employment want ads does not interfere with the editorial policy of the newspaper. There is precedent for the principle that advertising, per se, does not come within the purview of this constitutional right. In the case of *Lorain Journal Company v. U.S.*, 342 U.S. 143, 96 L. ed. 162 (1951), the United States Supreme Court held that an injunction restraining a publisher under the Sherman Antitrust Act from refusing to accept local advertising from customers using a competitive radio station for the same purpose did not violate the constitutional right of freedom of the press as a prior restraint upon what the newspaper could publish.

In the case of *Kovacs v. Cooper*, 336 U.S. 77, 93 L. ed. 513 (1949), the Court upheld a city ordinance prohibiting sound amplifiers used in public streets, stating that although freedom of speech is given a "preferred position", nevertheless "to enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself." As was pointed out by the United States Supreme Court in the case of *Mutual Film Corp. v. Industrial Commission*, 236 U.S. 230, 59 L. ed. 552, 559 (1915), the underlying safeguard of the constitutional

provision for freedom of the press is "that opinion is free and that conduct alone is amenable to the law".

Whether the Pittsburgh Press has a constitutional right to print editorials, or news columns, or byline stories for or against sex discrimination is not the issue before us. What is before us is the question of whether in its advertising business the use of arbitrarily sex-segregated employment want ad column headings by this newspaper "aids" an employer in sex discrimination. The Commission and the court below concluded in the affirmative. We affirm those findings and conclusions.

BROADNESS OF COMMISSION ORDER

The Pittsburgh Press properly points out that Section 4(c) of the Ordinance states:

> "Employer —Any person who employs five or more employees, exclusive of the parents, spouse or children of such person, including the City of Pittsburgh, its departments, boards, commissions, and authorities and any other governmental agency within its jurisdiction, but excluding any religious, fraternal, charitable or sectarian organization which is not supported in whole or part by any governmental appropriations."

Section 4(d) of the Ordinance states:

> "Employment — The term 'employment' shall not include the employment of individuals in domestic service."

The record clearly shows that approximately 25 per cent of the advertisers placing employment want ads in the Pittsburgh Press are based within the City of Pittsburgh. The record further indicates that the Ordinance

cannot affect out-of-city advertisers seeking employees for jobs located outside the jurisdiction of the Commission. Perhaps more importantly the Pittsburgh Press points out that in the introductory clause of Section 8 it is stated:

> "It shall be an unlawful employment practice, except where based upon applicable national security regulations established by the United States, by the Commonwealth of Pennsylvania, or by any political subdivision of the Commonwealth having jurisdiction in the City of Pittsburgh, or *except where based upon a bona fide occupational exception certified by the commission* in accordance with Section 7, Subsection (d) of this ordinance: . . ." (Emphasis added)

It is clear then that the Ordinance itself sets forth a number of exemptions whereby it would be legally permissible to discriminate. We are not called upon to pass on the morality or social wisdom of such exemptions; and certainly it is not within the scope of review of this Court to review the philosophical beliefs or the wisdom of the legislative body which created this Ordinance. The question presented to us is whether the order of the Commission was too broad.

For the purpose of clarification on this point, we set forth the order of the Commission which reads as follows:

> "AND NOW, to wit, this 23rd day of July, 1970, in accordance with the foregoing discussion, findings of fact, and conclusions of law, it is ordered, adjudged, and decreed that:

"1. The Pittsburgh Press shall, within thirty (30) days from the date of this order, cease and desist from violating Section 8(j) of Ordinance No. 75 of 1967, as amended, and that

"2. The Pittsburgh Press shall, within thirty (30) days from the date of this order, utilize the classification system of employment advertisement with no reference to sex."

The lower court affirmed this order except as to the extension of time. There can be no question that the order of the Commission restricts the Pittsburgh Press from making *any* reference to sex in its classification system of employment advertising. We must agree with the argument that the order of the Commission is too broad.

Section 402 of the Appellate Court Jurisdiction Act, (ACJA), Act of July 30, 1970, P.L.—(Act No. 223, 1970), 17 P.S. 211.402, gives jurisdiction to this Court on appeals from the common pleas court, when the "application, interpretation or enforcement" of a local ordinance, such as here, is in question. This Court is given the power to modify the order of either the lower court or of the Commission in Section 504* of the ACJA, *supra*. We will therefore modify the above-noted order of the Commission and the order of the lower court, and direct the Court of Common Pleas to enter it in conform-

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*"Section 504. Disposition of Appeals. — An appellate court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter an ddirect the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances."

ity with this opinion. In all other respects we affirm the adjudication of the Commission and the order of the court below.

Based upon the above discussion, we

Order

AND NOW, this 27 day of January, 1972, in accordance with the adjudication of the Pittsburgh Human Relations Commission, dated July 23, 1970, and the Opinion of the Commonwealth Court of Pennsylvania filed this date, it is hereby ordered that the Pittsburgh Press Company shall within thirty (30) days from the date of this Order, cease and desist from violating Section 8(j) of the City of Pittsburgh Ordinance No. 75 of 1967, as amended, including all reference to sex in employment advertising column headings, except as may be exempt under said Ordinance, or as may be certified as exempt by said Commission. This Order shall be entered forthwith in the records of the Prothonotary of Allegheny County at No. S.A. 768 of 1970.

HARRY A. KRAMER,
Judge

CERTIFIED FROM THE RECORD

FRANCIS C. BARBUSH,
Chief Clerk

January 27, 1972.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

PITTSBURGH PRESS COMPANY,
Appellant

v.

THE PITTSBURGH COMMISSION ON HUMAN RELATIONS, AND CITY OF PITTSBURGH,
Appellee

and

THE NATIONAL ORGANIZATION FOR WOMEN, INC.,
Intervenor-Appellee

and

THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
Amicus Curiae

No. 315
C.D. 1971

Before:

HONORABLE JAMES S. BOWMAN, President Judge
HONORABLE JAMES C. CRUMLISH, JR., Judge
HONORABLE HARRY A. KRAMER, Judge
HONORABLE ROY WILKINSON, JR., Judge
HONORABLE LOUIS L. MANDERINO, Judge
HONORABLE GLENN E. MENCER, Judge
HONORABLE THEODORE O. ROGERS, Judge

Argued: October 20, 1971

Judge Manderino did not participate in the decision of this case.

Opinion

DISSENTING OPINION BY JUDGE CRUMLISH, JR.

Filed: January 27, 1972

I dissent. The Pittsburgh Press Company has been cited by the Pittsburgh Commission on Human Relations for aiding or participating in the unlawful employment practice of publishing advertisements which discriminate the sexes. The Commission stated in its opinion: "As a necessary step in the adjudication of this case, the Commission must determine whether the action of an employer in causing an advertisement to be placed in a sex-segregated column itself violates the ordinance." I believe that the factual findings of the Commission, as recited in either the formal findings of fact or the text of the Commission's opinion, are not sufficient to support the conclusion that advertising in gender-segregated columns establishes of itself discrimination in employment. Absent proof, Pittsburgh Press cannot be justifiably accused of aiding in an unlawful employment practice.

As the majority said, we are reviewing the findings and conclusions of the Commission and not those of the court below. *Romain v. Middletown Area School District*, 1 Pa. Commonwealth Ct. 419, 421, 275 A. 2d 400 (1971). We must therefore look to the Decision and Order of the Commission in determining whether an unlawful employment practice occurred.

Section 10(i) of the Pittsburgh Human Relations Ordinance reads in part: " . . . If upon all the evidence presented, the Commission finds that the respondent has engaged or is engaging in an unlawful practice, it

shall state its findings of fact in writing and shall issue such an order in writing ***as the facts warrant*** . . . " (emphasis added). For Pittsburgh Press to be guilty of aiding and abetting an unlawful practice, section 10(1) would require factual findings by the Commission evidencing unlawful discrimination by employers. The Commission's failure to substantiate its legal conclusions is fatal to its adjudication of the publisher's guilt.

Only the following findings of fact were set forth by the Commission:

"1. The Pittsburgh Press is a newspaper of general circulation, and is engaged in business as a newspaper within the City of Pittsburgh.

"2. The National Organization for Women is an organization which has as one of its purposes combatting discrimination on the basis of sex. The Pittsburgh Chapter of the National Organization for Women has an office within the City of Pittsburgh.

"3. In 1969, the Pittsburgh Press ran a total of 248,000 help-wanted advertisements in its daily and Sunday editions.

"4. Of this advertising, 25 per cent is placed by advertisers based in the City of Pittsburgh.

"5. The Pittsburgh Press permits the advertiser to select the column within which its advertisement is to be inserted.

"6. When an advertiser does not indicate a column, the Press asks the advertiser whether it wants a male or female for the job and then inserts the advertisement in the jobs — male interest or jobs — female interest column accordingly.

"7. Prior to October of 1969, the Pittsburgh Press carried headings or captions on its relevant employment column as follows: "Male Help Wanted," "Female Help Wanted," and "Male-Female Help Wanted."

"8. From October of 1969 to the present time, the captions read: "Jobs — Male Interest," "Jobs — Female Interest," and "Male-Female."

"9. The Pittsburgh Press is an agent for the Pittsburgh Post-Gazette is the processing of employment advertisements.

"10. The Pittsburgh Press is the twelfth largest classified advertisement newspaper in the United States. The approximate circulation of the Pittsburgh Press daily is 350,000 and on Sunday 750,000."

These form the basis which purports to support the Commission's legal conclusion that "[i]t is an unlawful employment practice for an employer . . . to cause to be published an employment advertisement in a newspaper column, which column contains a caption with a designation as to sex." Clearly, the factual findings of the Commission, standing alone, do not support the conclusion reached. There is no factual showing that gender-segregated advertisements, with prominent disclaimers of discrimination, do in fact cause discrimination in employment.

The decision of the Commission allows three bases for its conclusion that gender-segregated columns are unlawful advertising by employers. First, it relies on the testimony of the Press' Classified Ad Manager who said that, in determining in which column to insert the advertisement of a prospective employer who did not proffer a column preference, he advises the employer

which of the sexes usually fills that particular position or he tries "to find out what type of person [the employer is] looking for." Although this testimony is damaging to the publisher's case, I see nothing more to this than that in an undetermined number of cases, all of which could have been exempt from or beyond the limits of the Commission's jurisdiction, employers do advertise in a particular column for the purpose of obtaining the service of a male or female. It was incumbent upon the Commission, however, to determine by evidence and factual findings, that the publisher's system was so egregious as to require the complete elimination of the practice rather than increased policing or regulation of it.

The second reason advanced by the Commission in its conclusion was "the necessary implication of the segregated columns . . . that men are given preference for jobs in one set of columns, and women are given preference for jobs in the other set . . . supported by the fact that the Pittsburgh Press runs a third section of employment advertisements, 'male-female' . . . available to men or women without discrimination." Are we to uphold the Commission's conclusion of "necessary implication" of discrimination when this conclusion is neither explained or substantiated by factual finding? Can we not say that another "necessary implication" is that an employer is seeking to reach the greatest number of qualified applicants by his action? Placing an advertisement in a gender-segregated column with this motive would not be illegal practice. Would the Commission proscribe advertising in the Jewish Exponent or Ebony Magazine because of the "necessary implication" that such advertisements do not reach non-

Jewish and non-Black potential applicants? State and municipal administrative tribunals must act upon the findings of fact as adopted by them. They may not rely upon "necessary implications" without adopting a sufficient basis in fact to support it.[1]

Finally, the Commission takes notice of certain jurisdictions which have found gender-segregated column unlawful per se. In each jurisdiction, the determination of unlawfulness was made by administrative regulation. The conclusion of per se discrimination has not heretofore been judicially tested in any of these jurisdictions. Nor has the Commission set forth or adopted the factual basis upon which these jurisdictions have reached this conclusion.

It is most unfortunate and disturbing to me to observe that in this landmark litigation, the adjudicating body has chosen to disregard the evidence presented it; that instead of seeking proof of its position, it has chosen to rely on unsubstantiated hunches and feelings. The issue raised herein deserves and requires greater in-depth consideration of the evil of gender-segregated want ads. The Commission's opinion and findings of fact

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1. We note, as the brief for the National Organization for Women suggests, that the testimony of Dr. Sandra Bem of Carnegie-Mellon University contains ample basis for finding that the full force and effect of an ad placed in the male column is to discourage women from applying. However, the Commission made no finding on the issue and did not use this testimony as support in its adjudication. We cannot guess as to the credence and credibility which the Commission ascribed to Dr. Bem's testimony. Under the mandate of section 10(1) of the City's ordinance we can only assume that the Commission disregarded this evidence.

do not substantiate their position that gender-segregated advertising is an unlawful employment practice.

Finally, it is necessary to comment upon the relationship of gender to other traits such as race, religion or ancestry. The court below stated in its opinion that "[s]ex classification is as unlawful as general captions of 'Black', 'White', 'Catholic', 'Presbyterian', 'Italian,' 'Polish,' or 'German' would be unlawful. [That] court will not reverse the determination that sex is an unlawful general designation just as any other comparable designation which uses sex, race, religion or national origin would be contrary to law." The majority adopts this position. I cannot, however, agree that classification by gender is by itself discriminatory.

To classify job interest by race or natural origin, while it may have some basis in fact, would be unlawful. The illegality of such advertising lies in the fact that the preferences expressed by such groups are the result of socio-economic factors, not inate characteristics of race or national origin. It is unlawful discrimination, without proper basis, to classify race or national origin socio-economically.

Unlike race and national origin, gender classification is based upon biological and emotional differences. The Bona Fide Occupational Qualification exemption for job related discrimination based upon gender clearly demonstrates that gender classification may have non-discriminatory bases in fact. The question of *inate* differences in job *preference,* as well as in occupational ability, is not per se unfounded. We must keep in mind that only unnatural or unjustifiable discrimination is wrongful. In my judgment, discrimina-

tion by natural classification does not violate anyone's Constitutional rights.

Because of the nature of sexual differences, as opposed to racial or ethnic differences, it was necessary for the Commission to dispell the notion that the Pittsburgh Press method of gender-segregated advertising results in gender-segregated employment practices which, even if distinguished by gender are based upon bona fide natural differences between the sexes. This classification would not be "discrimination" within the meaning of the Pittsburgh ordinance.

Despite the assertion by the lower court to the contrary, the task before the Commission was not formidable. Indeed the record before it may even contain "substantial evidence" upon which to ground its result. But the Commission must clearly adopt those findings of fact upon which it bases its conclusions of law. It must not be moved by current popular sentiment to implement its own whims, feelings, and philosophy. It must never be so zealous in the protection of the right to be free from discrimination as to act without legal basis; for when government becomes too protective, the basic freedoms we all enjoy erode, move into the legal dark ages, and we are back again to mere hope for basic freedoms.

JAMES C. CRUMLISH, JR., Judge

Judge Mencer joins in this Dissenting Opinion.

Certified from the Record.

FRANCIS C. BARBUSH.

Chief Clerk.

January 27, 1972.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

PITTSBURGH PRESS COMPANY,
Appelant
v.
THE PITTSBURGH COMMISSION ON HUMAN RELATIONS and CITY OF PITTSBURGH,
Appellee
and
THE NATIONAL ORGANIZATION FOR WOMEN, INC.,
Intervenor-Appellee
and
THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION
Amicus Curiae

C. D. 1971
No. 315

BEFORE:

HON. JAMES S. BOWMAN, President Judge
HON. JAMES C. CRUMLISH, JR., Judge
HON. HARRY A. KRAMER, Judge
HON. ROY WILKINSON, JR., Judge
HON. LOUIS L. MANDERINO, Judge
HON. GLENN E. MENCER, Judge
HON. THEODORE O. ROGERS, Judge

Argued: October 20, 1971

DISSENTING OPINION BY JUDGE MENCER

Filed January 27, 1972

I respectfully dissent. The complaint in this case alleged a violation by The Pittsburgh Press Company (appellant) of Section 8(j) of the City of Pittsburgh's Human Relations Ordinance. Section 8(j) makes it an unlawful employment practice "to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful employment practice or to obstruct or prevent any person from enforcing or complying with the provisions of this ordinance, or any rule, regulation or order of the Commission, or to attempt directly or indirectly to commit any act declared by this ordinance to be unlawful employment practice".

The complaint does not allege any violation by anyone else. It is simply impossible for the appellant to be guilty of aiding another in the violation of the ordinance when no violation is even alleged and in fact no attempt was made to prove such a violation. It is fundamental that one cannot aid that which did not occur.

I must conclude that due process clearly requires that, without alleging or proving a violation of the ordinance by an employer who was aided by appellant, the complaint is invalid on its face and should be dismissed.

GLENN E. MENCER, J.

Certified From the Record
FRANCIS C. BARBUSH
Chief Clerk

January 27, 1972

Appendix.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 208 ALLOCATUR DOCKET

PITTSBURGH PRESS COMPANY

v.

THE PITTSBURGH COMMISSION ON HUMAN RELATIONS, and CITY OF PITTSBURGH and THE NATIONAL ORGANIZATION FOR WOMEN, INC., Intervenor

Certified Copy of the Record

CERTIFIED FROM THE RECORD

February 18, 1972, Petition of Pittsburgh Press Company for allowance of appeal from the judgment of the COMMONWEALTH Court at No. 315 C. D. 1971, filed.

February 25, 1972, Answer of City of Pittsburgh, filed.

March 2, 1972, Memorandum of American Newspaper Publishers Association, Amicus Curiae, filed.

ORDER

June 21, 1972, Petition denied. PER CURIAM

MR. JUSTICE MANDERINO would allow an appeal to consider constitutional questions raised involving freedom of the press.

July 31, 1972, Petition for Supersedeas with Consent, filed.

ORDER

AND NOW, to wit, this 31st day of July, 1972, upon petition of the Pittsburgh Press Company and the Stipulation of all counsel, the Court grants the prayer of the within petition and directs that the Petition for Certiorari to the Supreme Court of the United States to be filed by the Pittsburgh Press Company in this action shall operate as a supersedeas and stays the Order of the Commonwealth Court of Pennsylvania dated January 27, 1972, provided that a bond in the amount of $1,500.00 be continued.

This supersedeas shall remain in effect until thirty (30) days after a denial of Certiorari by the Supreme Court of the United States or until thirty (30) days after a determination adverse to the Pittsburgh Press Company is rendered by the Supreme Court in the event Certiorari is granted. This thirty (30) day period does not enlarge the thirty (30) day period set forth in the Order of the Commonwealth Court.

PER CURIAM

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh, Pa. this 24th day of August 1972.

SALLY M. MRVOS
Deputy Prothonotary

Human Relations Ordinance

ORDINANCE NO. 75

ENACTED INTO LAW BY THE COUNCIL OF THE CITY OF PITTSBURGH ON FEBRUARY 27, 1967. APPROVED BY THE MAYOR, FEBRUARY 28, 1967. RECORDED IN VOLUME 68, PAGE 511, IN THE OFFICE OF THE CITY CLERK.

AN ORDINANCE

Prohibiting discrimination in employment, housing, public accommodations and other areas of intergroup relations in the social, cultural and economic life of the City of Pittsburgh; requiring fair employment practices, fair housing practices and fair public accommodations practices by prohibiting discrimination in employment, housing and public accommodations because of race, color, religion, ancestry, national origin or place of birth; establishing a Commission on Human Relations in the Office of the Mayor and prescribing the powers and duties thereof; providing penalties, and revising and consolidating the ordinances relating thereto.

The Council of the City of Pittsburgh hereby enacts as follows:

SECTION 1. SHORT TITLE

This Ordinance may be cited as the Pittsburgh Human Relations Ordinance.

SECTION 2. LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

(A) Legislative Findings

(1) The population of the City of Pittsburgh consists of people of every race, color, religion, ancestry, national origin and place of birth, many of whom by rea-

son of their race, color, religion, ancestry, national origin or place of birth are discriminated against in employment opportunities, places of public accommodation, resort, recreation and amusement, and housing facilities.

(2) Discrimination because of race, color, religion, ancestry, national origin or place of birth is contrary to the constitutions, laws and policies of the Commonwealth of Pennsylvania and the United States of America.

(3) Discrimination in employment prevents the gainful employment of large segments of citizens of the City, tends to impair the City's productive capacity, reduce the public revenues, impose substantial financial burdens upon the public for relief and welfare, and tends to create breaches of the peace and depressed living conditions which breed crime, vice, juvenile delinquency and disease, and is detrimental to the public safety, economic growth and general welfare of the City of Pittsburgh.

(4) Discrimination in housing results in overcrowded, segregated areas with substandard, unsafe and unsanitary living conditions, which cause increased mortality, disease, crime, vice and juvenile delinquency, fires and risk of fire, intergroup tensions and other evils, all of which increase the cost of government and reduce the public revenues, and result in injury to the public safety, health and welfare of the City of Pittsburgh.

(5) Discrimination in places of public accommodations, resort, recreation, amusement and places of business causes humiliation, embarassment and inconvenience to citizens and visitors of the City, tends to

create breaches of the peace, intergroup tensions and conflicts and similar evils, and is detrimental to the public safety, general welfare and economic growth of the City of Pittsburgh.

(B) Declaration of Policy

It is hereby declared to be the policy of the City of Pittsburgh, in the exercise of its powers for the protection of the public safety and the general welfare, for the maintenance of peace and good government and for the promotion of the City's trade, commerce and manufactures, to assure the right and opportunity of all persons to participate in the social, cultural, recreational and economic life of the City and to assure equal opportunity for all persons to live in decent housing facilities, free from restrictions because of race, color, religion, ancestry, national origin or place of birth.

To accomplish these goals it shall be the public policy of the City of Pittsburgh to prohibit discrimination because of race, color, religion, ancestry, national origin or place of birth in employment, housing and places of public accommodation, resort, recreation or amusement.

SECTION 3. SCOPE OF THE ORDINANCE

This Ordinance applies to discriminatory practices, including but not limited to discrimination in employment, housing and public accommodations, which occur within the territorial limits of the City of Pittsburgh and to employment, contracted for, performed or to be performed within these limits, and to housing accommodation, resort, recreation and amusement located within the territorial limits of the City.

SECTION 4. DEFINITIONS

As used in this Ordinance, the following terms shall have the meanings indicated, unless a different meaning clearly appears from context:

(a) Commission—The Commission on Human Relations established in the office of the Mayor of the City of Pittsburgh by this Ordinance.

(b) Discriminate and discrimination — The terms "discriminate" and "discrimination" include any difference in treatment based on race, color, religion, ancestry, national origin or place of birth.

(c) Employer — Any person who employs five or more employees, exclusive of the parents, spouse or children of such person, including the City of Pittsburgh, its departments, boards, commissions, and authorities, and any other governmental agency within its jurisdiction, but excluding any religious, fraternal, charitable or sectarian organization which is not supported in whole or part by any governmental appropriations.

(d) Employment — The term "employment" shall not include the employment of individuals in domestic service.

(e) Employment Agency — Any person regularly undertaking with or without compensation to procure opportunities for employment or to procure, recruit, refer or place employees.

(f) Housing Accommodation — (1) a building, structure or portion thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as a home, residence or sleeping

place by a person, by a family or by a group of persons living together, or (2) a parcel of real property or lot available for the construction of a housing accommodation.

(g) Labor Organization — Any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid protection in relation to employment.

(h) Lending Institution — Any bank, insurance company, saving and loan association, or any other person regularly engaged in the business of lending money or guaranteeing loans.

(i) Owner — The term "owner" includes the owner, co-owner, lessee, sub-lessee, mortgagee, assignee, manager, agent, or any other person having the right of ownership or possession or the authority to sell, rent or lease any housing accommodation, or any person having an equitable or security interest in any housing accommodation, including the City of Pittsburgh and its departments, boards, commissions, and authorities.

(j) Person — Any individual, partnership, corporation, labor organization or other organization or association, including those acting in a fiduciary or representative capacity, whether appointed by a court or otherwise. The term person, as applied to partnerships or other organizations or associations, includes their members, and as applied to corporations includes their officers.

(k) Real Estate Broker — Any natural person, partnership, corporation or other association which for a fee or other valuable consideration manages, sells, purchases, exchanges or rents or negotiates, or offers or attempts to negotiate the sale, purchase, exchange or rental of, the real property of another, or holds itself out as engaged in the business of managing, selling, purchasing, exchanging or renting the real property of another, or collect rent for the use of the real property of another, and includes real estate salesman or agents or any other person employed by a real estate broker to perform or to assist in the performance of his business.

(l) Public Accommodation, Resort, Recreation or Amusement — The term "Public Accommodation, Resort, Recreation or Amusement" includes any place, business or activity which is open to, accepts or solicits the patronage of the general public or offers goods, services or recreation to the general public.

ECTION 5. COMMISSION ON HUMAN RELATIONS:

(a) There is hereby established in the Office f the Mayor, a Commission on Human Relations to dminister, implement and enforce the provisions of his ordinance.

(b) The Commission shall consist of fifteen (15) embers to be appointed by the Mayor for a four-year rm. Commissioners may be reappointed to succesve terms of office. Each member of the Commission all continue to serve after his term until his succesr has been appointed and qualified.

(c) The term of all present members of the Commission shall not be affected by the enactment of this ordinance.

(d) The Commission shall elect one of its members as chairman and may elect such other officers as it may deem necessary. The Chairman may, with the approval of the Commission, appoint such committees as may be necessary to carry out the powers and duties of the Commission and the Commission may authorize such committees to take any necessary action for the Commission.

(e) The Commission shall adopt such rules and regulations for its own organization, operations and procedures as the Commission shall deem necessary to administer, implement and enforce this ordinance.

(f) The Commission shall hold at least ten monthly meetings during each calendar year. Five (5) members of the Commission shall constitute a quorum for the transaction of business, and a majority vote of those present at any meeting shall be sufficient for any official action taken by the Commission, except that approval of a majority of the members of the Commission shall be required before any public hearing may be held.

(g) The members of the Commission shall serve without compensation, but they may be reimbursed for all expenses necessary incurred in the performance of their duties in accordance with appropriations made by City Council.

SECTION 6. EXECUTIVE DIRECTOR

(a) The Mayor shall appoint an Executive Director and such other personnel as may be authorized by City Council to assist the Commission in administering, implementing and enforcing the provisions of this ordinance. In proposing a budget for the operation of the Commission and in selecting the Executive Director and other personnel, authorized by City Council, the Mayor shall take into consideration the recommendations of the Commission.

(b) The Executive Director shall serve as the staff executive officer for the Commission. He shall promote the efficient transaction of its business, the orderly handling of complaints and other matters before the Commission, and shall supervise the Commission, and shall supervise the Commission staff.

(c) The Commission may authorize the Executive Director to initiate complaints of unlawful practices, as set forth in this ordinance.

SECTION 7. POWERS AND DUTIES OF THE COMMISSION ON HUMAN RELATIONS

The Commission shall have the power and it shall be its duty to:

(a) Initiate, receive, investigate and seek the satisfactory adjustment of complaints charging unlawful practices, as set forth in this ordinance.

(b) Initiate or receive and investigate other complaints of discrimination against any person because of race, color, religion, ancestry, national origin or place of birth, and to seek the satisfactory adjustment of such complaints. Any complaint filed under this subsection

which the Commission believes may constitute a violation of a law of the United States of America or the Commonwealth of Pennsylvania may be certified to the City Solicitor for such actions as he may deem proper.

(c) Hold public hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith require the production of evidence relating to any matter under investigation or any question before the Commission, make finds of fact, issue orders and publish such findings of fact and orders and do all other things necessary and proper for the enforcement of this ordinance.

(d) Certify upon the request of any person that a particular occupation or position is exempt from the provisions of this ordinance relating to unlawful employment practices if the Commission finds that the occupation of a person or persons of a particular race, color, religion, ancestry, national origin or place of birth, and that such certification is not sought as means of circumventing the spirit and purpose of this ordinance, the burden of proving the facts required for such a finding to be in each instance upon the person requesting the certification of exemption from the provisions of this ordinance.

(e) Study and investigate by means of pub-hearings or otherwise any conditions having an adverse effect on intergroup relations in the City of Pittsburgh and to study the problems of prejudice, intolerance, bigotry and discrimination as they effect the public safety and general welfare of the City of Pittsburgh.

(f) Institute and conduct educational and other programs to promote the equal rights and opportunities of all persons, regardless of their race, color, religion, ancestry, national origin or place of birth, and to promote understanding among persons and groups of different races, colors, religion, ancestries, national origins or places of birth. In the performance of its duties, the Commission may cooperate with interested citizens, private agencies and agencies of the federal, state and local governments.

(g) Issue publications and reports of investigation and research in the field of human relations, and to cooperate with and accept grants from public and private agencies, including foundations, colleges and universities, engaged in similar research.

(h) Request other departments, boards and commissions of the City government to assist in the performance of its duties, and such other departments, boards and commissions shall cooperate fully with the Commission.

(i) Assist in the enforcement of fair practices in City contracts.

(j) Render from time to time a written report of its activities and recommendations to the Mayor and to City Council.

(k) Recommend legislation to promote and insure equal rights and opportunities for all persons regardless of their race, color, religion, ancestry, national origin or place of birth.

(l) Adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this ordinance.

SECTION 8. UNLAWFUL EMPLOYMENT PRACTICES

It shall be an unlawful employment practice, except where based upon applicable national security regulations established by the United States, by the Commonwealth of Pennsylvania, or by any political subdivision of the Commonwealth having jurisdiction in the City of Pittsburgh, or except where based upon a bona fide occupational exemption certified by the Commission in accordance with Section 7, subsection (d) of this ordinance:

(a) For any employer to refuse to hire any person or otherwise discriminate against any person with respect to hiring, tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, religion, ancestry, national origin or place of birth.

(b) For any employer, employment agency or labor organization to establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, the employment or membership opportunities of any person or group of persons because of race, color, religion, ancestry, national origin or place of birth.

(c) For any employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to deny to or withhold from any person the right to be admitted to or participate in a guidance program, an apprenticeship training program, an on-the-job training program or any other occupational training program because of race, color, religion, ancestry, national origin or place of birth.

(d) For any employer, employment agency or labor organization to require of any applicant for employment or membership any information concerning race, color, religion, ancestry, national origin or place of birth.

(e) For any "employer," employment agency or labor organization to publish or circulate, or to cause to be published or circulated, any notice or advertisement relating to "employment" or membership which indicates any discrimination because of race, color, religion, ancestry, national origin or place of birth.

(f) For any employment agency to fail or refuse to classify properly or refer to employment or otherwise to discriminate against any person because of race, color, religion, ancestry, national origin or place of birth.

(g) For any employer substantially to confine or limit recruitment or hiring of employees, with intent to circumvent the spirit and purpose of this ordinance, to any employment agency, employment service, labor organization, training school, training center or any other employee-referring source which serves persons who are predominantly of the same race, color, religion, ancestry, national origin or place of birth.

(h) For any labor organization to discriminate against any person in any way which would deprive or limit his employment opportunities or otherwise adversely affect his status as an applicant for employment or as an employee with regard to tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, religion, ancestry, national origin or place of birth.

(i) For any employer, employment agency or labor organization to discriminate against any person because he has opposed any practice forbidden by this ordinance or because he had made a complaint or testified or assisted in any manner in any investigation or proceeding under this ordinance.

(j) For any person, whether or not an employer, employment agency or labor organization, to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful employment practice by this ordinance, or to obstruct or prevent any person from enforcing or complying with the provisions of this ordinance or any rule, regulation or order of the Commission, or to attempt directly or indirectly to commit any act declared by this ordinance to be an unlawful employment practice.

SECTION 9. UNLAWFUL HOUSING PRACTICES

It shall be an unlawful housing practice, except as otherwise provided in this section:

(a) For any owner, real estate broker or any other person to refuse to sell, lease, sublease, rent, assign or otherwise transfer, or to refuse to negotiate for the sale, lease, sublease, rental, assignment or other transfer of the title, leasehold or other interest in any housing accommodation to any person, or to represent that any housing accommodation is not available for inspection, sale, lease, sublease, rental, assignment or other tranfer when in fact it is so available, or otherwise to deny or withhold any housing accommodation from any person because of race, color, religion, ancestry, national origin, or place of birth, or to discriminate against, segregate or assign quotas to any person or group of persons in

connection with the sale, lease, sublease, rental, assignment or other transfer of the title, leasehold, or other interest in any housing accommodation or housing accommodations.

(b) For any person, including any owner or real estate broker, to include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any housing accommodation any clause, condition or restriction discriminating against, or requiring any other person to discriminate against, any person in the use or occupancy of such housing accommodation because of race, color, religion, ancestry, national origin or place of birth.

(c) For any person, including any owner or real estate broker, to discriminate in the furnishing of any facilities or services for any housing accommodation because of race, color, religion, ancestry, national origin or place of birth.

(d) For any person, including any owner or real estate broker, to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, and communication, notice, advertisement or sign of any kind relating to the sale, rental, lease, sublease, assignment, transfer or listing of a housing accommodation or accommodations which indicates any preference, limitation, specification or discrimination based on race, color, religion, ancestry, national origin, or place of birth.

(e) For any person, including any bank, banking organization, mortgage company, insurance company or other financial or lending institution, or any agent or employee thereof, to whom application is made for

financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or housing accommodations:

(1) to discriminate against any person or group of persons because of race, color, religion, ancestry, national origin or place of birth of such person or group of persons or of the prospective occupants or tenants of such housing accommodation in the granting, withholding, extending, modifying, or renewing, or in the rates, terms, conditions or privileges of any such financial assistance or in the extension of service in connection therewith; or

(2) to use any form of application for such financial assistance or make any record or inquiry in connection with applications for such financial assistance which indicates, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, ancestry, national origin or place of birth, or any intent to make any such limitation, specification or discrimination.

(f) For any real estate broker or real estate salesman or agent, or any other person for business or economic puposes, to induce, directly or indirectly, or to attempt to induce directly or indirectly, the sale or rental or the listing for sale or rental, of a housing accommodation by representing that a change has occurred or will or may occur with respect to the racial, religious or ethnic composition of the street, block, neighborhood or area in which said housing accommodation is located.

(g) For any person, whether or not a real estate broker, real estate salesman or agent, owner or lending

institution to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful housing practice under this ordinance, or to obstruct or prevent enforcement or compliance with the provisions of this ordinance or any rule, regulation or order of the Commission, or to attempt directly or indirectly to commit any act declared by this ordinance to be unlawful housing practice.

(h) Nothing in this ordinance shall bar any religious or sectarian institution or organization, or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious or sectarian organization, or any bona fide private or fraternal organization from limiting admission to or giving preference to persons of the same religion or sect, or to members of such private or fraternal organization, or from making such selection as is calculated by such organization to promote the religious or sectarian principles or the aims, purposes or fraternal principles for which it is established or maintained.

Section 10. Unlawful Public Accommodation Practices

It shall be an unlawful public accommodation practice:

(a) For the owner, lessee, proprietor, manager, superintendent, agent or employee of any business or place of public accommodation, resort, recreation or amusement to:

(1) refuse, withhold from or deny to any person because of his race, color, religion, ancestry, national origin or place of birth, either directly or indirectly,

any of the accommodations, advantages, facilities, services or privileges, products of goods of such place of public accommodation, resort or amusement; or

(2) publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, goods, products, services and privileges of any such place shall be refused, withheld or denied to any person on account of race, color, religion, ancestry, national origin or place of birth, or that the patronage of any person of any particular race, color, religion, ancestry, national origin or place of birth is unwelcome, objectionable, or not acceptable, desired or solicited.

(b) For any person, whether or not included in Section 10(a) of this ordinance, to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful public accommodations practice under this ordinance.

SECTION 11. OBSTRUCTION OF FAIR PRACTICES

It shall be unlawful for any person, whether or not within the named classifications set forth in this ordinance, to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful practice under this ordinance, or to obstruct or prevent enforcement or compliance with the provisions of this ordinance or any rule, regulation or order of the Commission or to attempt directly or indirectly to commit any act declared by this ordinance to be an unlawful practice.

SECTION 12. CITY CONTRACTS

(a) All contracts of the City of Pittsburgh and its contracting agencies shall obligate the contractor to comply with this ordinance and with any state or federal law or laws or regulations relating to unlawful employment practices in connection with any work to be performed thereunder and shall require the contractor to include a similar provision in all subcontracts.

(b) The Commission shall promulgate rules and regulations for the processing of complaints of discrimination received under this section.

SECTION 13. PROCEDURE

(a) A complaint charging that any person has engaged or is engaging in any unlawful practice as set forth in this ordinance, may be made by the Commission, by an aggrieved person or by an organization which has as one of its purposes the combating of discrimination or the promotion of equal opportunities, and any complaint may be amended by the complainant or the Commission at any time before final action has been taken by the Commission, in accordance with such rules and regulations as the Commission shall prescribe.

(b) The complaint shall be in writing, signed and verified, and include the name and address of the person or persons alleged to have committed the unlawful practice and the particulars thereof and such other information as may be required by the Commission.

(c) The Executive Director and staff shall make a prompt and full investigation of each complaint of an unlawful practice and report to the Commission.

(d) If the Commission shall determine that there is no basis for the allegations in a complaint, the complaint shall be dismissed and the complainant notified in writing. Within ten (10) days from the receipt of such notice, the complainant or his attorney, may file with the Commission a request for review and the Commission shall provide the complainant and his attorney an opportunity to appear before the Commission, a member thereof, or a staff representative of the Commission. After such a review the Commission may reverse its decision, or if the Commission or its representative determines that there is no basis for the allegation, the dismissal of the complaint shall be affirmed and there shall be no further review of such decision.

(e) If the Commission determines after investigation that probable cause exists for the allegations made in the complaint, it may attempt to eliminate the unlawful practice by means of private conferences or meetings with all parties. The Commission shall not make public the details of such informal proceedings, but it may pubish the terms of any agreement when a complaint has been satisfactorily adjusted.

(f) If the Commission determines that a housing accommodation or housing accommodations involved in a complaint of an unlawful housing practice under Section 9 of this ordinance may be sold, rented or otherwise disposed of, before a determination of the case has been made, and the Commission believes that there is probable cause for the complaint, the Commission may request the City Solicitor to seek an injunction restraining the sale, rental, or other disposition of the housing

accommodation or housing accommodations in accordance with the provisions of Section 9.1 of the Pennsylvania Human Relations Act of October 27, 1955, P. L. 744, added by Act No. 533, approved January 24, 1966, as hereafter amended, supplemented or modified by the General Assembly of Pennsylvania.

(g) In any case of failure to eliminate the unlawful practice charged in the complaint by means of informal proceedings, or in advance thereof, if in the judgment of the Commission the facts so warrant, the Commission may hold a public hearing to determine whether or not an unlawful practice has been committed or, without holding such a hearing, certify the case to the City Solicitor in accordance with Section 14 of this ordinance.

(h) Where a public hearing is ordered, the Commission shall designate one or more members to conduct such a hearing. The Commission shall serve upon the person charged with having engaged or engaging in the unlawful practice, hereinafter referred to as respondent, a statement of the charges made in the complaint or amended complaint and a notice of the time and place of the hearing. The hearing shall be held not less than ten (10) days after the service of the statement of charges.

The respondent shall have the right to file an answer to the statement of charges, to appear at the hearing in person or to be represented by an attorney, or, subject to the approval of the hearing panel, by any other person, and to examine and cross-examine witnesses. The complainant shall also have the right to be represented by an attorney, or subject to the approval of the hearing panel, by any other person. The Commis-

sion shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony, taken at the hearing, shall be under oath and may be transcribed.

(i) If upon all the evidence presented, the Commission finds that the respondent has not engaged in any unlawful practice, it shall state its findings of fact in writing and dismiss the complaint. If upon all the evidence presented, the Commission finds that the respondent has engaged or is engaging in an unlawful practice, it shall state its findings of fact in writing and shall issue such order in writing as the facts warrant to effectuate the purposes of this ordinance. Such order may require the respondent to cease and desist from such unlawful practice and to take such affirmative action, including, but not limited to, the hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the selling, renting or leasing of a housing accommodation or housing accommodations upon equal terms and conditions and with such equal facilities, services and privileges, the tendering of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, the granting, permitting, selling or admission to any of the accommodations, advantages, facilities, services or privileges, products or goods of any respondent place of public accommodation, resort, recreation or amusement, upon such equal terms and conditions to any person discriminated against or to all persons as, in the judgment of the Commission, will effectuate the purpose of this ordinance and are warranted by the facts presented

at the hearing, including a requirement for a report or reports of the manner of compliance. Copies of the order shall be served on all parties.

Section 14. Enforcement

In the event the respondent refuses or fails to comply with any order of the Commission or violates any of the provisions of this ordinance, the Commission shall certify the case and the entire record of its proceedings to the City Solicitor, who shall invoke the aid of an appropriate court to secure enforcement or compiance with the order or to impose the penalties set forth in Section 15, or both.

Section 15. Penalties

Any person who shall vioate any provision of this ordinance relating to unlawful practices, or any rule or regulation pertaining thereto adopted by the Commission or any order of the Commission, shall be subject to a fine of not more than Three Hundred Dollars ($300.00) and in default of payment of the fine and costs shall be subject to imprisonment for a period not exceeding ninety (90) days.

Section 16. Severarility

The provisions of this ordinance are severable and if any provision, sentence, clause, section or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to other persons or circumstances. It

is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had been specifically exempted therefrom.

SECTION 17. SAVING CLAUSE

The provisions of this ordinance, so far as they are the same as those of ordinances repealed by this ordinance, are intended as a continuation of such ordinances and not as new enactments. The provisions of this ordinance shall not affect any act done or any complaint or proceeding pending under authority of the repealed ordinances. All rules and regulations adopted pursuant to any ordinance repealed by this ordinance shall continue with the same force and effect as if such ordinance had not been repealed.

SECTION 18. EFFECTIVE DATE

The effective date of this ordinance is immediately.

SECTION 19. REPEAL

Ordinance No. 237, approved June 25, 1955, Ordinance No. 523, approved December 8, 1958, and Ordinance No. 106, approved March 10, 1966, are hereby repealed absolutely. Any other ordinance or part of ordinance, conflicting with the provisions of this ordinance, be and the same is hereby repealed, so far as the same affects this ordinance.

Ordinance Number 395

Enacted into law by the Council of the City of Pittsburgh on July 3, 1969. Approved by the Mayor, July 7, 1969. Recorded in Volume 70, Page 691, in the office of the City Clerk.

AN ORDINANCE—Amending and supplementing Ordinance No. 75, approved February 28, 1967, entitled "An Ordinance prohibiting discrimination in employment, housing, public accommodations and other areas of inter-group relations in the social, cultural and economic life of the City of Pittsburgh; requiring fair employment practices, fair housing practices and fair public accommodation practices by prohibiting discrimination in employment, housing and public accommodations because of race, color, religion, ancestry, national origin or place of birth; establishing a Commission on Human Relations in the Office of the Mayor and prescribing the powers and duties thereof; providing penalties, and revising and consolidating the ordinance relating thereto," to prohibit discrimination in employment, housing and public accommodations and other areas of inter-group relations in the social, cultural and economic life of the City of Pittsburgh because of sex and to require fair employment practices, fair housing practices and fair accommodation practices by prohibiting discrimination in employment, housing and public accommodations for persons of both sexes.

SECTION 1. That Sections 2(A)(1)(2) and Section 2(B) of Ordinance No. 75, approved February 28, 1967, entitled "An Ordinance prohibiting discrimination

in employment, housing, public accommodations and other areas of intergroup relations in the social, cultural and economic life of the City of Pittsburgh; requiring fair employment practices, fair housing practices and fair public accommodation practices by prohibiting discrimination in employment, housing and public accommodations because of race, color, religion, ancestry, national origin or place of birth; establishing a Commission on Human Relations in the Office of the Mayor and prescribing the powers and duties thereof; providing penalties, and revising and consolidating the ordinance relating thereto," is hereby amended to read as follows:

Section 2. Legislative findings and declaration of policy:

(A) Legislative findings.

(1) The population of the City of Pittsburgh consists of people of every race, color, religion, ancestry, national origin, place of birth and sex, many of whom, by reason of their race, color, religion, ancestry, national origin, place of birth or sex are discriminated against in employment opportunities, places of public accommodation, resort, recreation and amusement, and housing facilities.

(2) Discrimination because of race, color, religion, ancestry, national origin, place of birth or sex, is contrary to the Constitution, laws and policies of the Commonwealth of Pennsylvania and the United States of America.

(B) Declaration of policy.

It is hereby declared to be the policy of the City of Pittsburgh, in the exercise of its powers for the protection of the public safety and the general welfare, for the maintenance of peace and good government and for the promotion of the City's trade, commerce and manufactures, to assure the right and opportunity of all persons to participate in the social, cultural, recreational and economic life of the City and to assure equal opportunity for all persons to live in decent housing facilities, free from restrictions because of race, color, religion, ancestry, national origin, place of birth or sex.

To accomplish these goals, it should be the public policy of the City of Pittsburgh to prohibit discrimination because of race, color, religion, ancestry, national origin, place of birth or sex, in employment, housing and places of public accommodation, resort, recreation or amusement.

SECTION 2. That Section 4(B) of Ordinance No. 75, approved February 28, 1967, entitled as aforesaid, be amended to read as follows:

(B) Discriminate or discrimination — the terms "discriminate" and "discrimination" include any difference in treatment based on race, color, religion, ancestry, national origin, place of birth, or sex.

SECTION 3. That Ordinance No. 75, approved February 28, 1967, entitled as aforesaid, be supplemented by adding thereto a new Section 20 to read as follows:

Section 20. Unlawful Employment, Housing and Public Accommodations Practices Because of Sex.

It shall be an unlawful employment practice, unlawful housing practice or unlawful public accommodation practice for any person to discriminate against any other person in the manner set forth in Sections 8, 9, 10 and 11 of this Ordinance because of sex.

SECTION 4. That any Ordinance or part of Ordinance, conflicting with the provisions of this Ordinance, be and the same is hereby repealed so far as the same affects this Ordinance.